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# ENVIRONMENTAL ASSESSMENT BOARD

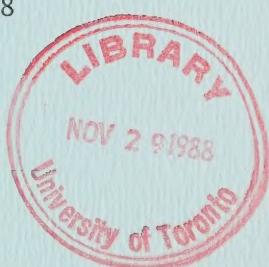
VOLUME: 60

DATE: Wednesday, November 16th, 1988

BEFORE: M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member



FOR HEARING UPDATES CALL (TOLL-FREE): 1-800-387-8810

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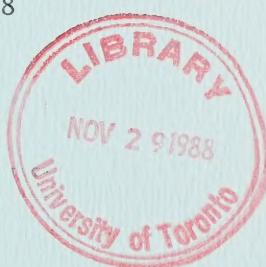
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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL  
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR  
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental  
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental  
Assessment for Timber Management on Crown  
Lands in Ontario;

- and -

IN THE MATTER of an Order-in-Council  
(O.C. 2449/87) authorizing the  
Environmental Assessment Board to  
administer a funding program, in  
connection with the environmental  
assessment hearing with respect to the  
Timber Management Class  
Environmental Assessment, and to  
distribute funds to qualified  
participants.

-----  
Hearing held at the Ramada Prince Arthur  
Hotel, 17 North Cumberland St., Thunder  
Bay, Ontario, on Wednesday, November 16th,  
1988, commencing at 9:00 a.m.

-----  
VOLUME 60

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member



A P P E A R A N C E S

MR. V. FREIDIN, Q.C.)	MINISTRY OF NATURAL
MS. C. BLASTORAH )	RESOURCES
MS. K. MURPHY )	
MR. B. CAMPBELL )	MINISTRY OF ENVIRONMENT
MS. J. SEABORN )	
MR. R. TUER, Q.C.)	ONTARIO FOREST INDUSTRY
MR. R. COSMAN )	ASSOCIATION and ONTARIO
MS. E. CRONK )	LUMBER MANUFACTURERS'
MR. P.R. CASSIDY )	ASSOCIATION
MR. J. WILLIAMS, Q.C.	ONTARIO FEDERATION OF ANGLERS & HUNTERS
MR. D. HUNTER	NISHNAWBE-ASKI NATION and WINDIGO TRIBAL COUNCIL
MR. J.F. CASTRILLI)	
MS. M. SWENARCHUK )	FORESTS FOR TOMORROW
MR. R. LINDGREN )	
MR. P. SANFORD )	KIMBERLY-CLARK OF CANADA
MS. L. NICHOLLS)	LIMITED and SPRUCE FALLS
MR. D. WOOD )	POWER & PAPER COMPANY
MR. D. MacDONALD	ONTARIO FEDERATION OF LABOUR
MR. R. COTTON	BOISE CASCADE OF CANADA LTD.
MR. Y. GERVAIS)	ONTARIO TRAPPERS
MR. R. BARNES )	ASSOCIATION
MR. R. EDWARDS )	NORTHERN ONTARIO TOURIST
MR. B. MCKERCHER)	OUTFITTERS ASSOCIATION
MR. L. GREENSPOON)	NORTHWATCH
MS. B. LLOYD )	



APPEARANCES: (Cont'd)

MR. J.W. ERICKSON, Q.C.)	RED LAKE-EAR FALLS JOINT
MR. B. BABCOCK )	MUNICIPAL COMMITTEE
MR. D. SCOTT )	NORTHWESTERN ONTARIO
MR. J.S. TAYLOR)	ASSOCIATED CHAMBERS OF COMMERCE
MR. J.W. HARBELL)	GREAT LAKES FOREST
MR. S.M. MAKUCH )	
MR. J. EBBS	ONTARIO PROFESSIONAL FORESTERS ASSOCIATION
MR. D. KING	VENTURE TOURISM ASSOCIATION OF ONTARIO
MR. D. COLBORNE	GRAND COUNCIL TREATY #3
MR. R. REILLY	ONTARIO METIS & ABORIGINAL ASSOCIATION
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MR. G.J. KINLIN	DEPARTMENT OF JUSTICE
MR. S.J. STEPINAC	MINISTRY OF NORTHERN DEVELOPMENT & MINES
MR. M. COATES	ONTARIO FORESTRY ASSOCIATION
MR. P. ODORIZZI	BEARDMORE-LAKE NIPIGON WATCHDOG SOCIETY
MR. R.L. AXFORD	CANADIAN ASSOCIATION OF SINGLE INDUSTRY TOWNS
MR. M.O. EDWARDS	FORT FRANCES CHAMBER OF COMMERCE
MR. P.D. McCUTCHEON	GEORGE NIXON



(iii)

APPEARANCES: (Cont'd)

MR. C. BRUNETTA

NORTHWESTERN ONTARIO  
TOURISM ASSOCIATION



I N D E X   O F   P R O C E E D I N G S

<u>Witness:</u>	<u>Page No.</u>
<u>CAMERON CLARK,</u> <u>FRANK KENNEDY,</u> <u>JOHN McNICOL,</u> <u>JOSEPH BEECHEY,</u> <u>NEVILLE WARD,</u> <u>GORDON PYZER, Resumed</u>	10342
Continued Cross-Examination by Mr. Campbell	10342
Re-Direct Examination by Mr. Freidin	10364



I N D E X   O F   E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
376	Document titled: CWIP projects approved February '87 to February '88.	10377
377	Moose Management Policy, dated December 15, 1980.	10384



1           ---Upon commencing at 9:00 a.m.

2                 THE CHAIRMAN: Thank you, ladies and  
3                 gentlemen. Good morning.

4                 Mr. Campbell?

5                 MR. CAMPBELL: Thank you, Mr. Chairman.

6                 As the Board is aware, it was expected I  
7                 would meet with Mr. Freidin last night and that meeting  
8                 took place and I think I should report to the Board  
9                 basically three items and they are all, of course, in  
10                 relation to the Fish Habitat Guidelines.

11                 First, there is no difference of opinion  
12                 between the ministries with regard to the minimum  
13                 information requirements set out in the guidelines, and  
14                 most particularly, of course, recorded in the policy  
15                 for the use of those guidelines.

16                 Secondly, with regard to the  
17                 prescriptions which are required when minimum  
18                 information is not available, again, there is no  
19                 difference in position between the ministries, and I  
20                 would note that there are absolute requirements in  
21                 those areas as set out in the policy; that is, there  
22                 are what I have been terming mandatory prescriptions in  
23                 that situation where minimum information is not  
24                 available.

25                 The third matter is that it is clear that

1       there has been a genuine difference in interpretation  
2       in other areas as to what constitutes what I have been  
3       referring to as mandatory prescriptions. The two  
4       ministries are in the process of resolving those  
5       differences and we expect to be able to advise the  
6       Board of the nature of that resolution either before  
7       Panel 8's evidence or at the time of Panel 8's  
8       evidence.

9                     THE CHAIRMAN: So at this point, I take  
10      it, you are prepared to drop that issue and move on to  
11      something else until such time as you have got it  
12      resolved or advised the Board that you cannot resolve  
13      it?

14                     MR. CAMPBELL: Yes,, I have some  
15      questions for Mr. Ward in this area, but I have no --  
16      and I understand, and I have no problem with Mr. Ward  
17      answering those questions pursuant to the Ministry of  
18      Natural Resources' interpretation of those areas of the  
19      guidelines where there is that genuine difference of  
20      opinion. I don't think that's essential to the points  
21      that I am trying to make in the balance of my  
22      cross-examination of him on these matters.

23                     THE CHAIRMAN: I see. And you feel it is  
24      worthwhile pursuing this at this time without waiting  
25      for a resolution of your differences of opinion?

1                   MR. CAMPBELL: Yes, I do, Mr. Chairman,  
2 and if you feel differently I invite you to interrupt.

3                   THE CHAIRMAN: Well, it is your  
4 cross-examination, so I think you know best what you  
5 want to accomplish, so I think we will entertain it.

6                   MR. CAMPBELL: Thank you, Mr. Chairman.

7                   CAMERON CLARK,  
8                   FRANK KENNEDY,  
9                   JOHN McNICOL,  
10                  JOSEPH BEECHEY,  
11                  NEVILLE WARD,  
12                  GORDON PYZER, Resumed

13                  CONTINUED CROSS-EXAMINATION BY MR. CAMPBELL:

14                  Q. Mr. Ward, during your  
15 cross-examination by Ms. Swenarchuk, you indicated that  
16 you were not satisfied with the degree to which the  
17 guidelines as they existed previously had been applied  
18 over the course of the '80s. Do you recall that?

19                  MR. WARD: A. Yes, I do.

20                  Q. And Ms. Swenarchuk pointed out in her  
21 question that at that point they were draft guidelines  
22 and asked you whether you were satisfied that those  
23 guidelines from '81 to the present had provided  
24 sufficient protection for the aquatic habitat.

25                  You responded: I think when they have  
been applied they have provided sufficient protection,  
yes.

1                    You were then asked: Do I take it that  
2        you are not satisfied with the degree to which they  
3        have been applied, and you indicated: That's correct.

4                    Do you recall that testimony?

5                    A. I do.

6                    Q. And I take it that that opinion that  
7        you expressed was based on your direct prior  
8        experience?

9                    A. That's correct.

10                  Q. Could you describe for the Board,  
11        please, some of the situations which arose which led  
12        you to the conclusion that they were not being applied  
13        in that earlier time period?

14                  A. Well, I think one of the problems  
15        that I had with application of the guidelines is that  
16        different districts had different interpretations of  
17        what size of lakes constituted fisheries values.

18                  And I think I indicated in my previous  
19        evidence that we had a regional, sort of, directive  
20        trying to give some guidance to some districts that we  
21        would consider it down to lakes at least 50 hectares in  
22        size or larger.

23                  Personally, I felt there were fisheries  
24        values in lakes less than 50 hectares but, you know,  
25        there were some districts that weren't even considering

1 them or applying them necessarily to a lake maybe that  
2 was 75 metres in size. So there was inconsistent  
3 application to different types and sizes of lakes.

4 I guess the other area that I had some  
5 problems with is that we weren't necessarily looking at  
6 upstream spawning areas in some lakes in terms of  
7 putting buffers and doing the required -- getting the  
8 necessary information to assess whether there were  
9 upstream spawning areas, and I know there had been  
10 instances where logging -- especially in the winter  
11 time with small streams, it is sometimes difficult to,  
12 you know, identify streams and it is very easy to cut  
13 right across the stream and leave a lot of debris over  
14 that stream.

15 So that was one of the areas that I  
16 wasn't satisfied with as well.

17 Q. And was that the kind of thing that  
18 was actually happening in the field?

19 A. In certain places, yes.

20 Q. Could you describe for us the  
21 consequences, paint us a picture of what would happen  
22 when that kind of circumstance developed?

23 A. What do you mean what would happen?  
24 You mean in terms of remedial action or anything like  
25 that?

1                   Q. No, in terms of if you went out in  
2         the field, what was it that you saw, what was happening  
3         in the field, what was it that you saw that you would  
4         take a look at and say: This is first a problem and it  
5         is a situation where the guidelines should have been  
6         applied to prevent this problem?

7                   A. Well, in some lakes and I am not --  
8         you know, that I looked at where a good majority of the  
9         shoreline was cut. I felt that there was a fair bit of  
10       organic material added to the lake, I felt that shading  
11       effects of some trees on the shoreline, I felt there  
12       were concerns possibly with sediment movement.

13                  I know one case a landing was built close  
14       to the shoreline of a lake and, you know, I didn't do  
15       any pre- and post-assessment of documenting these  
16       things, but I just thought they were putting that  
17       aquatic environment at great risk when we didn't  
18       necessarily need to do so.

19                  Q. All right. Now, in Exhibit 367,  
20       which is a letter that was filed, it is a letter over  
21       your signature, I believe it is in 1983, the latter  
22       quarter of the year to Mrs. Judy Taggart, the editor of  
23       Lakeline. Do you recall that?

24                  A. Yes, I do.

25                  Q. On the second page of that letter,

1 for instance, you give a specific example -- give a  
2 couple of specific examples where there have been  
3 problems, and perhaps just to bring it right down to  
4 the ground, could you describe what happened in Seeger  
5 Creek that you were unhappy about?

6 A. Well, Seeger Creek was a tributary to  
7 Lac Seul and there was a logging road that was built  
8 across it, just upstream from what we had identified as  
9 a potential spawning area at the mouth of the stream.

10 The company had put in a water crossing  
11 without the approved culvert. They had used logs to  
12 build a culvert and the fill that they placed in the --  
13 on the top of the logs had eroded and fallen through  
14 and there was quite a bit of sediment that went  
15 downstream from this water crossing.

16 And, in this case, I worked with a  
17 conservation officer to investigate whether we could  
18 proceed with charges under the Fisheries Act in terms  
19 of adding a deleterious substance, in this case, silt,  
20 to fish habitat. And we had set up sediment traps in  
21 the spawning areas because the water crossing was still  
22 eroding and we had to collect sediment from upstream  
23 sources and as well as from the banks of the stream.

24 I had this sediment, for different  
25 samples we collected, analysed by the soils lab at the

1 University of Manitoba to see if they could type the  
2 different types of soil that's around and that the  
3 soil -- the sediment that was ending up in our sediment  
4 traps in the spawning beds in fact actually came from  
5 the fill added by the company as opposed to natural  
6 erosion that comes from upstream.

7 And we could prove that in terms of the  
8 soil analysis, but we couldn't prove that that in  
9 actual fact was a spawning area utilized by fish, even  
10 though the conservation officer had subsequently  
11 visited the site during spawning seasons to see if fish  
12 were utilizing the area.

13 We have, under the Fisheries Act, up to  
14 two years to lay charges and, therefore, we have some  
15 time to try and gather that information. So we didn't  
16 proceed with charges there because we couldn't sort of  
17 give all the evidence we required.

18 Q. All right. I am less concerned I  
19 guess about the charges, but is it fair to say in that  
20 situation that, in your opinion, someone made a  
21 judgment or decision which, in your opinion, affected  
22 fish habitat and, in your opinion as a fisheries  
23 biologist, those decisions or judgments were  
24 inappropriate?

25 A. Yes, I do. I think in terms of Panel

1       14 on access we will get into more of a discussion on  
2       roads and water crossings and the problems that we have  
3       with water crossings and how we want to mitigate this.  
4       We will talk about the environmental guidelines for  
5       access roads and water crossings.

6                 Q. All right. Now, sort of with that  
7       background I would like to take you back to your  
8       cross-examination from Ms. Swenarchuk.

9                 You go on to say shortly following the  
10      excerpt that I read previously in response to a  
11      question as to what assurance can we have or the Board  
12      have this draft will be applied more comprehensively  
13      than the past ones. In the course of our answer --

14                 A. The draft referring to the Fish  
15      Habitat Guidelines?

16                 Q. I believe so, yes. But you go on to  
17      say in your answer that before, as a draft, there  
18      wasn't specific direction and that you felt that with  
19      the kind of new legislation or directives coming out,  
20      while there is going to be a teething process people  
21      would learn to apply the guidelines, does it apply in  
22      this situation and that situation, and so on.

23                 Ms. Swenarchuk then asked you the  
24      following question:

25                 "Would you agree with me though that the

1                   guidelines are new and we don't yet know  
2                   the extent to which they are going to  
3                   make a difference in fisheries  
4                   protection?"

5                   You answered:

6                   "I would agree with that, yes."

7                   Q. Now, I would like to tell you how I  
8                   interpret that answer and ask you whether that is in  
9                   fact what you in fact intended.

10                  The way I understand that answer is that  
11                  you agreed with Ms. Swenarchuk's proposition simply on  
12                  the basis that for any new guidelines there may be this  
13                  sort of teething process that you talk about. Is that  
14                  what you intended by your answer?

15                  A. Yes.

16                  Q. And I take it that you were not  
17                  suggesting that the application of the guidelines would  
18                  not be effective in protecting fish habitat and water  
19                  quality?

20                  A. That's correct.

21                  Q. In fact, as I understand it, your  
22                  position is that the application of the guidelines will  
23                  be effective in protecting that habitat and water  
24                  quality?

25                  A. That's correct.

1                   Q. Now, there has been a concern  
2                   expressed consistently that the professionals working  
3                   on a unit should not be unnecessarily constrained in  
4                   exercising their professional skills and judgment and I  
5                   take it that would be a concern which you share?

6                   A. That's right.

7                   Q. Would you agree, however, that given  
8                   your view that the application of the guidelines will  
9                   be effective in protecting fish habitat and water  
10                  quality, that it is fair for me to conclude that, in  
11                  your opinion, the application of the Fish Habitat  
12                  Guidelines does not in fact compromise your use of  
13                  professional skills and experience in timber management  
14                  planning?

15                  A. That's right.

16                  Q. And you give that opinion in full  
17                  knowledge of the requirement for mandatory minimum  
18                  information requirements, at least in the areas in  
19                  which we have agreed this morning, mandatory  
20                  prescriptions?

21                  A. You mean regarding minimum  
22                  information?

23                  Q. Yes.

24                  A. Yes.

25                  Q. And minimum prescriptions or reserves

1       in the cases where that minimum information is not  
2       available?

3                   A. That's correct.

4                   Q. All right. And you have taken all of  
5       that into account in giving your opinion on the use of  
6       your professional judgment?

7                   A. That's right.

8                   Q. Thank you. Now, with respect to the  
9       protection offered by the Fish Habitat Guidelines, I  
10      believe you have dealt with this but I just want to be  
11      absolutely clear on it.

12                  You would agree, I take it, that other  
13      riparian uses requiring protection would be overlaid on  
14      or in addition to the protection of riparian values  
15      which flows from the application of the Fish Habitat  
16      Guidelines?

17                  A. Yes, it flows from applying the moose  
18      guidelines, the tourism guidelines, as well as the fish  
19      guidelines in the timber management planning process.

20                  Q. All right. But there is the  
21      possibility that the application of a variety of other  
22      guidelines or implementation manuals may result in two  
23      or three reasons for the protection of any particular  
24      area of shoreline, but also could result in protection  
25      of additional shoreline areas over and above those

1       contemplated by the Fish Habitat Guidelines?

2                     A. Exactly.

3                     Q. Mr. Clark, I would like to turn to  
4       you then, please, and I guess I have a small conundrum  
5       to put to you on the application or, rather, the  
6       judgment which has to be exercised as to data  
7       requirements.

8                     As I understand your evidence, you have  
9       said a number of things. First, that the kind, amount  
10      and specificity of data depends on the potential  
11      effect; is that correct?

12                  MR. CLARK: A. Correct.

13                  Q. And so you go through a process of  
14      thinking about what the potential effects are, that's  
15      sort of a starting point; is that correct?

16                  A. Correct.

17                  Q. And this allows you to make some  
18      determination as to the adequacy of your existing  
19      database and to identify areas in which it may have to  
20      be supplemented?

21                  A. Correct.

22                  Q. Now, would you agree with me that  
23      there are many areas of effects where the effects of  
24      timber management are simply not known or not well  
25      known, particularly in the longer term?

1                   I am thinking of, having read the ESSA  
2 reports that will be dealt with in later panels and  
3 nutrient balances, all sorts of things, in which there  
4 is -- people are thinking about long-term effects but  
5 the science hasn't sort of tied it down; is that fair?

6                   A. Yes. I characterize it as technical  
7 and scientific uncertainty.

8                   Q. Oh, scientific uncertainty. There  
9 are a considerable number of areas in which there is a  
10 wide range of scientific uncertainty; is that a fair  
11 generalization?

12                  A. I think so, yes.

13                  Q. And that can exist both in relation  
14 to the physical features that are present in the  
15 environment, you would agree?

16                  A. Yes.

17                  Q. And it can also exist in relation to  
18 the resources which are of concern in timber  
19 management, things like Mr. McNicol's areas, where, for  
20 instance, the knowledge of the precise habitat or  
21 behavior of a species is not complete and may have  
22 large unknowns in it?

23                  A. Correct.

24                  Q. Now, would you agree then with the  
25 proposition, going back to your original logic, that to

1 the extent that there is an uncertainty as to potential  
2 effects, there is necessarily uncertainty when making  
3 judgments as to the kind, amount and specificity of  
4 data required?

5 A. I would agree.

6 Q. And to the degree that there is more  
7 uncertainty as to the effects, there is, I would  
8 suggest to you, equivalently more uncertainty as to the  
9 kind, amount and specificity of data required?

10 A. I think that's generally true.

11 Q. What causes you pause?

12 A. I am not sure there is any real  
13 pause. I like to think in concrete terms. I like to  
14 think about specific examples, but I think generally I  
15 am agreeing with your line of reasoning.

16 Q. All right, thank you. Now, I would  
17 like to continue with you, but then turn to the  
18 position that this panel has put forward with respect  
19 to the data that is available to apply to the timber  
20 management planning process, and I think you have been  
21 quite fair and frank in saying that all of the  
22 important data is locally kept; is that fair? Is that  
23 a fair summary?

24 A. The majority of it, yes.

25 Q. All right, the majority of it is.

1                   And, as I understand the evidence of this  
2 panel, would you agree that what the panel has done in  
3 part is given assurances that that local data is  
4 appropriately recorded and is retrievable for timber  
5 management planning purposes? That's one of the points  
6 you are trying to make in this panel?

7                   A. Yes.

8                   Q. And when I say appropriately recorded  
9 and retrievable, you include the wisdom and experience  
10 that your professionals carry around in their head  
11 about the unit they are dealing with?

12                  A. Correct.

13                  Q. Now, as I understand the thrust of  
14 your argument on this panel, as a practical matter, it  
15 is not possible to review with this Board the actual  
16 records, data and accumulated wisdom which you say is  
17 available at this local level.

18                  The actual data itself, not the kinds of  
19 data but the actual data, as a practical matter, we  
20 can't bring it all here and examine it?

21                  A. That's right. I think what we  
22 attempted to do was provide examples and summaries and  
23 tables of contents that were indicative of the kind of  
24 information that we had at the district level.

25                  Q. Right. You would agree that the

1 focus has been on the kind of information that you have  
2 available and you have demonstrated that well?

3                   But that in terms of arriving at a  
4 judgment as to the depth and quality of the actual  
5 information that is out there in the local offices,  
6 that has not been brought into this hearing?  
.

7                   A. I think to some extent it has, but  
8 generally what we have done, as I say, is provide an  
9 indication of the kind of information that we have with  
10 examples that have perhaps a sufficient amount of  
11 detail in them that they would give the Board some  
12 insight as to the quality of the information that's  
13 generally available as well.

14                  Q. All right. But let me put to you an  
15 analogy which is always a dangerous thing to do, but I  
16 will do it anyway.

17                  In effect, isn't it fair to summarize the  
18 evidence of this panel that what you have shown to the  
19 Board is: Here are all the file folders, here are all  
20 the labels on the file folders that reveal the kind of  
21 information that we have got, but only to a very  
22 limited extent have we actually looked into the file  
23 folders?

24                  A. Yes. I would say that was generally  
25 true, although I am not sure what your point here is

1 and I guess what I would --

2 Q. My point is just to have you answer  
3 my question, Mr. Clark.

4 A. Well then, the way I would answer is  
5 to say yes, that is true to an extent, although I think  
6 that we were very careful in choosing our examples to  
7 try and demonstrate or to provide the Board with  
8 somewhat more information than just simply the titles  
9 in a file folder.

10 We were faced with a problem of creating  
11 a document of extreme length, which this was anyway,  
12 and we did try, in choosing examples, to demonstrate  
13 not only the kind of information but, to some extent,  
14 the quality of the information, so that if we were  
15 looking at information on trappers, the information we  
16 included allowed us and the Board to make some  
17 determination about who the trappers were, where they  
18 live, whether they were native or non-native and that  
19 sort of the thing.

20 So there is some truth in what you say,  
21 although I think we have made a conscious effort to go  
22 further than that.

23 Q. I appreciate that and I don't argue  
24 with the proposition that you have been very careful in  
25 choosing examples and bringing that forward, I would

1 agree with that proposition, I suspect everyone would.

2                   But the proposition I would like to put  
3 to you and get your view on is this: That in the areas  
4 where decisions are being made where there are no  
5 specified minimum -- mandatory minimum information  
6 guidelines or information requirements, rather, aren't  
7 we in the position at this point anyway that we have to  
8 rely on the planning process which is part of this  
9 undertaking to ensure there is sufficient public  
10 involvement when making timber management planning  
11 decisions so as to verify the actual local information  
12 base that is used in that process?

13                  A. I would agree that that's a very  
14 important component of the process, and I think we have  
15 stated that on a number of occasions, that we do rely  
16 on that process to assist us in either verifying the  
17 information we have or adding to it or correcting it.

18                  Q. But the proposition I am putting to  
19 you is: Yes, we have seen some examples that are, I  
20 would suggest to you, a glimpse of what's in those  
21 files, but what we have to rely on is the planning  
22 process which will take appropriate information from  
23 all of those files, selectively pick out from all of  
24 that information, most of which is not here, and bring  
25 to bear on it that planning process to result in an

1 appropriate timber management planning?

2 That's what we have reliances on working  
3 it through that planning process?

4 A. I believe that's correct.

5 Q. Now, with respect to the components  
6 which might be required for making decisions with  
7 respect to timber management, I am going to go through  
8 with you in a similar way to what I did with Mr. Ward  
9 yesterday in talking about effects, effectiveness and  
10 compliance.

11 I am going to suggest to you five areas  
12 which I will ask whether you believe are appropriate or  
13 necessary areas to look at when making timber  
14 management planning decisions, and I understand that  
15 you may view some or all of these as already being  
16 covered in the process. I am not asking you to point  
17 to me where they were, I am just asking you whether you  
18 believe that these are in fact appropriate components.

19 Do you understand what I am saying?

20 A. I do.

21 Q. All right. The first component that  
22 I would ask you to agree is required in making  
23 decisions with respect to timber management is to  
24 identify the resources that are of concern when making  
25 that decision and that that can include both non-timber

1 resources, other values, and it can include the  
2 characteristics of the sites that are being considered  
3 for timber management purposes.

4                   Would you agree with that proposition?

5                   A. I would agree.

6                   Q. All right. Secondly, the second  
7 component that is required is to make an assessment of  
8 potential effects of timber management activities in  
9 relation to each of those resources that have been  
10 identified in the first component I asked you to speak  
11 to?

12                  A. I would agree.

13                  Q. Third, there needs to be an  
14 understanding of the actual data that is available with  
15 respect to each of those resources. Would you agree  
16 with that?

17                  A. Yes, I would.

18                  Q. Fourth, there needs to be an  
19 understanding of the Ministry's guidelines or  
20 implementation manuals which are relevant to each of  
21 those resources. Would you agree with that? .

22                  A. I would.

23                  Q. And finally, fifth, there needs to be  
24 an analysis of the expected effect of the activities  
25 proposed allowing for application of the guidelines or

1 mitigation measures; that is, expected -- analysis of  
2 expected effects after application of the guidelines or  
3 mitigation measures. Would you agree with that?

4 A. Yes.

5 MR. CAMPBELL: Thank you, Mr. Chairman,  
6 those are my questions.

7 THE CHAIRMAN: Thank you very much, Mr.  
8 Campbell.

9 We caught you by surprise, Mr. Freidin?

10 MR. FREIDIN: Yes.

11 THE CHAIRMAN: Where are we with respect  
12 to your re-examination, are you ready to continue at  
13 this time?

14 MR. FREIDIN: If I can just have a  
15 second.

16 MS. BLASTORAH: Mr. Chairman, maybe just  
17 while Mr. Freidin is getting ready, I didn't have an  
18 opportunity to speak to Mr. Mander and there are a few  
19 exhibits that will be referred to during the  
20 re-examination. I don't know whether you wish to  
21 retrieve them, but I can give you the numbers if you  
22 would like, and maybe Mr. Mander could get them for  
23 you.

24 Exhibits No. 4, 247, 301, 370, 371, and  
25 367.

1                   THE CHAIRMAN: Well, you don't know if  
2       they are all in front of us, do you?

3                   MS. BLASTORAH: Well, most of them have  
4       been recently marked. Exhibit 4 is the Environmental  
5       Assessment Document.

6                   THE CHAIRMAN: Right, we have got that.

7                   MS. BLASTORAH: I will just get my list  
8       and check what they are.

9                   No. 367 is the letter from Mr. Ward that  
10      was just referred to this morning, so you may very well  
11      have that.

12                  THE CHAIRMAN: Right, we have that.

13                  MS. BLASTORAH: No. 301 is the values map  
14      which is a blow-up we have over here.

15                  THE CHAIRMAN: Okay.

16                  MS. BLASTORAH: No. 370 and 371 are the  
17      two resource agreements, the Dome Exploration and the  
18      Golden Patricia.

19                  And the one last one, 247, is the Habitat  
20      Guidelines for Woodland Caribou. I don't know that you  
21      will really need it. It was marked by Ms. Swenarchuk,  
22      I believe.

23                  THE CHAIRMAN: I am not sure we have  
24      that, but...

25                  MS. BLASTORAH: Perhaps I could --

1                   THE CHAIRMAN: We have got one copy here.

2                   MS. BLASTORAH: Okay. I think if you  
3                   have one that will probably suffice.

4                   THE CHAIRMAN: All right, thank you.

5                   MR. FREIDIN: Mr. Chairman, could I have  
6                   ten minutes.

7                   THE CHAIRMAN: Very well. Why don't we  
8                   break until ten o'clock.

9                   MR. FREIDIN: Thank you.

10                  THE CHAIRMAN: Thank you.

11                  ---Recess taken at 9:45 a.m.

12                  ---Upon resuming at 10:05 a.m.

13                  THE CHAIRMAN: Thank you, ladies and  
14                  gentlemen. Please be seated.

15                  Very well, Mr. Freidin.

16                  MR. FREIDIN: Mr. Chairman, if I just  
17                  might, in relation to the comments made by Mr. Campbell  
18                  about the two ministries getting together to discuss  
19                  those Fish Habitat Guidelines, I have spoken to Mr.  
20                  Campbell and he has no problem with me reserving my  
21                  rights should there be a failure to agree, reserving my  
22                  rights to in fact advise the Board what it wanted to  
23                  hear and that is what the Ministry's position was in  
24                  relation to the outstanding concerns by the Ministry of  
25                  the Environment on those guidelines.

1 THE CHAIRMAN: Very well.

2 REDIRECT EXAMINATION BY MR. FREIDIN:

3 Q. Now, Mr. Ward, I am going to ask you  
4 the first question and I will be jumping back and forth  
5 between various people.

6 During your cross-examination by Ms.  
7 Swenarchuk, you testified that there is no database at  
8 the district level on the effects of timber management  
9 activities on the aquatic environment and that the  
10 Ministry of Natural Resources does not assess these  
11 impacts province-wide.

12 Do you remember giving that evidence?

13 MR. WARD: A. I do.

14 Q. Can you advise me, if the Timber  
15 Management Guidelines for the Protection of Fish  
16 Habitat are properly applied in each district, would  
17 you expect any significant detrimental effects on the  
18 aquatic environment from such activities either at the  
19 district or at the provincial level?

20 A. I wouldn't.

21 Q. Mr. Pyzer, do you have Volume 3 of  
22 the witness statement, the one in relation to  
23 socio-economics?

24 MR. PYZER: A. Yes, I do.

25 Q. I would like you to turn to page 754

1 of that document, please.

2 A. Yes, I have that.

3 Q. You have that. That is the one  
4 entitled -- that deals with the Crown land  
5 recreationalists?

6 A. Correct.

7 Q. When you were looking at this page  
8 with Ms. Swenarchuk she suggested to you that it only  
9 dealt with locations.

10 MR. FREIDIN: Page 754, Mr. Chairman, it  
11 will be 266C, page 754.

12 THE CHAIRMAN: Thank you.

13 MR. FREIDIN: Q. Now, when you were  
14 looking at this page with Ms. Swenarchuk she suggested  
15 that it only dealt with locations of the recreational  
16 activity but not to its use. And do you recall that  
17 exchange?

18 MR. PYZER: A. I thought I did clarify  
19 that it didn't deal just with the location, but I do  
20 recall the discussion.

21 Q. All right. When she examined you on  
22 this matter she referred you specifically to the  
23 left-hand column during her examination, and I want to  
24 ask you:

25 Does the left-hand column or any other

1 part of that table, including the references cited on  
2 that table, indentify information which is normally  
3 available regarding the user and the use of the  
4 particular locations described?

5 A. Yes, actually a significant amount of  
6 it does.

7 Q. And without spending any great amount  
8 of time on the matter, could you just identify the  
9 matters which in fact do deal with use or user?

10 A. Well, obviously, if you come down,  
11 the easiest one to look at is fish and wildlife use.  
12 In fact, it says that itself, fish and wildlife use and  
13 resource requirement.

14 Q. Where are you looking? Where are you  
15 looking?

16 A. I am sorry, about bullet point No. 5.

17 Q. On the left or the right-hand side of  
18 the page?

19 A. On the left-hand side.

20 Q. Right.

21 A. And bullet point No. 5 says:

22 "Fish and wildlife use/resource  
23 requirements...."

24 And it gives a series of references  
25 there: 6, 8, 3, 13 and 12 and, again, in the

1        bibliography that follows you can find various  
2        references to what those are.

3                And, again, just to pull one example, No.  
4        6 is the Lake of the Woods creel survey and in effect  
5        on page 757 -- on page 757, No. 6, just as one example,  
6        is the Ministry's Lakes of the Woods creel survey which  
7        is 45 pages of the use of the fishery on Lake of the  
8        Woods, and that is simply one example.

9                Q. In relation to that, just the one  
10      item you mentioned, Item No. 8, we can determine what  
11      that is by looking at the source of information column  
12      which is the right-hand column?

13                A. Yes. Again, if you look on the  
14      left-hand side after each one of those bullet points  
15      you will see a series of numbers and those numbers  
16      correspond with the same number on the right-hand side  
17      as the source and still on the right-hand side that is  
18      a fairly general -- like, creel survey is No. 6 on the  
19      right-hand side.

20                If you turn to No. 6 in the list of  
21      sources which follows on page 757, you will see exactly  
22      what reference No. 6 is.

23                Q. All right. And could you just then,  
24      in relation to the sources of information described on  
25      the right-hand side of the column, advise which of

1 those documents contains information regarding use or  
2 users?

3 I don't want the details, just which of  
4 those documents would provide information in relation  
5 to those two matters?

6 A. In fact, Mr. Freidin, I believe every  
7 one does.

8 Q. Thank you.

9 Mr. Kennedy, Ms. Swenarchuk questioned  
10 you about Exhibit 301 which is the map behind you from  
11 the Timmins Forest FMA. During the examination in  
12 relation to that particular exhibit, you referred to  
13 that map - and I think I have got down your words  
14 correctly - as "one of the first productions akin to a  
15 values map."

16 My question for you is: Why did you say  
17 that it was a production akin to a values map?

18 MR. KENNEDY: A. I was aware of the fact  
19 that the legend on this particular map is titled an  
20 area of concern map and I would indicate that at the  
21 time that the information was prepared I don't believe  
22 we had the values map concept in the district, it was  
23 included in the Class EA, but the production of this  
24 timber management plan, again, prior to the June  
25 amendments of the Class EA.

1                   Q. Thank you.

2                   Mr. McNichol, do you have Exhibit 247 in  
3 front of you which is the document Habitat Management  
4 Guidelines for Woodland Caribou?

5                   MR. McNICOL: A. I do.

6                   Q. Could you turn to page 4, please, and  
7 there we have a page which is entitled: Guidelines for  
8 the Protection of Woodland Caribou Habitat by Means of  
9 Modified Management Areas.

10                  During the cross-examination by Mr.  
11 Williams regarding moose guidelines, you were  
12 describing a situation where a request to an Assistant  
13 Deputy Minister would have to be made to routinely  
14 deviate from the moose guidelines.

15                  Do you recall giving that hypothetical in  
16 relation to that matter?

17                  A. I do.

18                  Q. And am I correct that in that  
19 situation what you were describing was a situation  
20 where a decision was made to have woodland caribou as a  
21 featured species?

22                  A. That's correct.

23                  Q. Now, in your evidence you made  
24 reference to large clearcuts being required on a  
25 routine basis in that case; is that correct?

1 A. That's correct.

2 Q. Does the page that Ms. Swenarchuk  
3 referred you to refer to the subject of clearcuts?

4 A. I am sorry, we are referring to the  
5 same page now?

6 Q. Back to page 4 of 247.

7 A. It does.

8 Q. And she didn't refer you to that  
9 particular clause. Could you just read it in for the  
10 purpose of the record?

11 A. Point 4 under the guidelines:

12 "Adjacent to prime winter range and in  
13 frequently used winter range where lichen  
14 biomass is low, timber harvesting can  
15 occur. Large clearcuts, 130 hectares to  
16 500 hectares, are more advantageous than  
17 numerous small clearcuts."

18 Q. Could you explain why that is the  
19 case?

20 A. This particular species requires  
21 areas that produce lichen for winter arrangement. The  
22 type of clearcut that is proposed here and the  
23 attendant instructions with regard to how to treat that  
24 site, are designed to produce the proper types of  
25 habitat for woodland caribou. This type of treatment

1 would not produce proper habitat necessarily for moose.

2 Q. Thank you.

3 Mr. Clark, my next question is for you.

4 During the cross-examination by Mr. Williams he  
5 presented to you a job specification for a position in  
6 the district which approximated that 60 per cent of the  
7 job would require the person to be in the office and 40  
8 per cent of the time would be in the field.

9 Do you recall that particular line of  
10 questioning?

11 MR. CLARK: A. I do.

12 Q. Can you advise, in giving your  
13 evidence in relation to the district organization, when  
14 you indicated that the staff in the district have a  
15 strong field orientation, were you referring to the  
16 time that is spent in the bush by district staff or was  
17 the strong field orientation also based on spending  
18 time in the district office?

19 A. It was -- the strong field  
20 organization related to both, and the point I was  
21 making there was that they certainly do spend time in  
22 the field, but while they are in the district they are  
23 also dealing with field-oriented matters and are often  
24 dealing with individual stakeholders or stakeholder  
25 groups in the office.

1                   So the field orientation, it both  
2 involves being in the field and in the office as well.

3                   Q. Thank you.

4                   Mr. Kennedy, my next question is for you.  
5 In your examination-in-chief you testified to the  
6 differences between a forest ecosystem classification  
7 system -- let me finish my ice, Mr. Chairman. That is  
8 better.

9                   So you testified about that. You  
10 testified about forest land and productivity surveys  
11 which were referred to as FLAPS and you also testified  
12 about prime land inventory. You also testified to how  
13 the forest ecosystem classification system is used to  
14 generate information and how a forester would use that  
15 information. Do you recall doing that?

16                   MR. KENNEDY: A. I do.

17                   Q. And in the case of FLAPS, the forest  
18 land and productivity survey, you also gave evidence as  
19 to how a forester would use the information provided;  
20 is that correct?

21                   A. Yes, it is.

22                   Q. In cross-examination by Ms.  
23 Swenarchuk, you indicated that you had no on-the-ground  
24 experience in relation to FECs, FLAPs and prime land  
25 inventory with the exception of being involved in the

1       early development of the forest ecosystem  
2       classification in the northwest region.

3                     My question for you, Mr. Kennedy, is: Do  
4       you believe that you were qualified to give the  
5       evidence that you did give on those three sources of  
6       information?

7                     A. Yes, I do.

8                     Q. On what basis do you say that?

9                     A. On the basis that the formal training  
10      which I received during the course of my university  
11      education provided courses in soils and tree biology,  
12      tree growth, and that information is important in the  
13      understanding of the application of the different  
14      sources of soils information that we were talking about  
15      in the FECs, the FLAPs and the prime land inventory, as  
16      well as the years of experience which I have in  
17      implementing silvicultural programs.

18                     And, on the basis of the fact that the  
19      various inventories and classifications which I  
20      described are produced for use by field foresters for  
21      their application at the management unit level, and I  
22      would consider myself having -- the years of experience  
23      that I have had at that level, I am quite capable of  
24      advising the Board on how that information is used at  
25      that level.

1 Q. Thank you. Mr. Kennedy, another  
2 question for you. During the cross-examination by Mr.  
3 Williams a number of questions regarding the use of  
4 forest access roads by the public were posed. You  
5 indicated during that evidence that during timber  
6 management planning, when dealing with locations of  
7 roads, a use management strategy is established. Do  
8 you recall giving that evidence?

9 A. Yes, I do.

10 Q. My first question for you in relation  
11 to that evidence is: When establishing a use  
12 management strategy, is maintenance and abandonment of  
13 the road also addressed during timber management  
14 planning?

15 A. Yes, it is.

16 Q. And are there locations in the Timber  
17 Management Planning Manual, Exhibit No. 7, and the  
18 Environmental Assessment Document, Exhibit No. 4, which  
19 indicate that that is the case?

20 A. Yes, there is.

21 MR. FREIDIN: Mr. Chairman, for ease of  
22 reference and, Mr. Kennedy, perhaps you can just have  
23 these two documents in front of you to just make sure  
24 that I am giving them a proper reference, in Exhibit  
25 No. 7, the Timber Management Planning Manual, the

1 reference is at page 101.

2 MR. FREIDIN: Q. Are you able to confirm  
3 that that is correct?

4 MR. KENNEDY: A. Yes, it is.

5 Q. You find that right at the bottom of  
6 the page.

7 A. That's correct.

8 Q. And in terms of the Environmental  
9 Assessment Document, would you turn to Appendix No. 2,  
10 tell me when you have got Appendix 2, Mr. Kennedy?

11 A. I have it.

12 Q. Would you turn to page 3?

13 A. Yes.

14 Q. On page 3, at lines 13 to 18 and page  
15 4, lines 14 to 21, is there reference in relation to  
16 this subject matter which indicates that maintenance  
17 and abandonment of the road is also addressed during  
18 timber management planning?

19 A. Would you tell me the lines on page 4  
20 again, please?

21 Q. Lines 14 to 21.

22 A. Yes.

23 Q. Does the public have the opportunity  
24 for input into the decisions on the appropriate use of  
25 management strategy for roads being planned in the

1 timber management plan?

2 A. Yes, they do.

3 Q. I understand that will be dealt with  
4 in some detail by Panels 14 and 15?

5 A. That's correct.

6 Q. Mr. McNicol, the next question is for  
7 you. Ms. Swenarchuk was questioning you about the  
8 percentage of time that you spent dealing with moose as  
9 distinct from non-game species and, on the other hand,  
10 species such as ospreys, bald eagles and that sort of  
11 thing. Do you remember that line of questioning?

12 MR. McNICOL: A. I do.

13 Q. Her examination included I guess the  
14 posing of a rhetorical question, she said:

15 "It is difficult to say how much time can  
16 be teased out for other non-game  
17 species."

18 You answered that question by referring  
19 her to various activities of the community wildlife  
20 involvement program in the Thunder Bay District. Do  
21 you recall doing that?

22 A. I do.

23 Q. Now, I understand that Forests For  
24 Tomorrow were provided with information through the  
25 interrogatory process about projects approved for the

1        period February '87 to February of '88 regarding this  
2        program for a number of districts, I think  
3        approximately 18 in the area of the undertaking; is  
4        that correct?

5                  A. Yes, that's correct.

6                  Q. Can you advise whether the document I  
7        am showing you now is a copy of the information which  
8        was provided to Forests For Tomorrow?

9                  A. It is.

10                 MR. FREIDIN: Mr. Chairman, I would like  
11        to file that as an exhibit.

12                 THE CHAIRMAN: Very well, that will be  
13        Exhibit No. 376, I believe.

14                 MR. FREIDIN: Perhaps, what is the name  
15        of that? What are we going to refer to that?

16                 THE CHAIRMAN: It has got CWIP projects  
17        approved February '87 to February '88.

18        ---EXHIBIT NO. 376: Document titled: CWIP projects  
19        approved February '87 to February  
'88.

20                 THE CHAIRMAN: What does CWIP stand for,  
21        The Canadian Wildlife Improvement Program?

22                 MR. FREIDIN: No, the Community Wildlife  
23        Involvement Program.

24                 THE CHAIRMAN: Thank you. I got the  
25        wildlife part.

1                   MR. FREIDIN: Q. My next question is for  
2 you, Mr. Clark.

3                   On November the 14th you were examined by  
4 Mr. Hunter and during that cross-examination the  
5 following exchange took place between you and Mr.  
6 Hunter about cookbooks.

7                   Now, I have a copy of the transcript, it  
8 hasn't been officially published, Mr. Chairman, so I  
9 can't give you a volume and page number, but I want to  
10 read to you just a short excerpt from that exchange  
11 between you and Mr. Hunter.

12                  He said:

13                  "Let me go back then and ask you about  
14 cookbooks, other cook books because he  
15 had been talking about that earlier.

16                  Moose guidelines, are they cookbooks?"

17                  Your answer was:

18                  "Blind application of the guidelines in  
19 the absence of local knowledge and  
20 experience, I would say could be  
21 construed as using them as a cookbook.

22                  The word I would stress there is they are  
23 guidelines. They provide direction, they  
24 provide a context within which people at  
25 the local level can assess local

1 decision, make reasonable judgements."

2 Mr. Hunter asked:

3 "So, therefore, would it be your  
4 professional opinion that it is very  
5 difficult to establish effective  
6 guidelines for timber management at a  
7 fairly general level, and that you must  
8 have information at a local level?"

9 And your answer was:

10 "I would agree with that."

11 And my first question for you, Mr. Clark,  
12 is: Can you advise why it is very difficult to  
13 establish effective guidelines for timber management at  
14 a fairly general level?

15 MR. CLARK: A. Well, as we pointed out,  
16 there is a fair amount of variability throughout the  
17 area of the undertaking, so that to turn out a set of  
18 guidelines that speaks to a wide range of cases and  
19 allows for consistent application, as I pointed out, is  
20 quite difficult.

21 Q. Do you have a view as to whether the  
22 three provincial guidelines that have been discussed or  
23 referred to during this panel - those are the  
24 Guidelines for the Protection of Fish Habitat, the  
25 Guidelines for the Provision of Moose Habitat in Timber

1 Management and the Guidelines for Protection of Tourism  
2 Values are effective guidelines?

3 A. Well, I think as I have pointed out  
4 they represent the best information that's currently  
5 available and that in that context I believe they are  
6 effective guidelines.

7 Q. In relation to the last part of your  
8 answer to Mr. Hunter, can you advise why you said that  
9 you must have information at a local level?

10 A. Well, it runs to the heart of all our  
11 evidence in this panel in that we emphasized the fact  
12 that we are a decentralized organization and our  
13 strength lies in the fact that we have qualified people  
14 who have local knowledge and experience and who can  
15 bring that local knowledge and experience to bear in  
16 making appropriate recommendations or decisions.

17 Q. Thank you. Now, I have a question  
18 which relates to that for Mr. McNicol, Mr. Ward, and  
19 Mr. Pyzer.

20 I am going to ask -- pose the question  
21 once and I am going to ask each of you to answer it in  
22 relation to the guidelines that you had particular  
23 involvement with, either in a working context or in the  
24 development of this.

25 My question is: Notwithstanding that

1       there may have been difficulty in establishing them, in  
2       your opinion, has the Ministry of Natural Resources  
3       established an effective guideline for the provision of  
4       moose habitat in timber management, for the protection  
5       of fish habitat and for the protection of tourism  
6       values in timber management.

7                     Perhaps I can start with you, Mr.  
8                     McNicol.

9                     MR. McNICOL: A. I agree with your  
10          statement for the reasons that Mr. Clark outlined,  
11          there is a good deal of scientific knowledge that has  
12          been brought to bear with regard to production of these  
13          particular guidelines and I feel confident as a  
14          professional biologist that they are effective  
15          guidelines for the provision of moose habitat.

16                     Q. Mr. Ward?

17                     MR. WARD: A. I would also agree  
18          considering the policy that's in place gives direction  
19          to the field in how to implement the guidelines.

20                     Q. Mr. Pyzer, in relation to the tourism  
21          guidelines?

22                     MR. PYZER: A. I would say they are  
23          extremely effective. The only point I would like to  
24          bring to the Board's attention is that the tourism  
25          guidelines were prepared without one single Ministry of

1           Natural Resources' person involved in the preparation.

2                 They were prepared specifically by the .  
3                 forest industry and tourist industry working together,  
4                 facilitated by the Ministry of Natural Resources at  
5                 four sets of workshops across northern Ontario on two  
6                 separate occasions involving well over a hundred people  
7                 in those two industries, and not one single MNR person  
8                 involved.

9                 Q. Thank you. Mr. McNicol, my next  
10          question is for you. During your evidence --

11                 THE CHAIRMAN: Mr. Pyzer, just out of  
12          curiousity, how many members of the public were  
13          involved in that exercise?

14                 MR. PYZER: In the tourism guidelines?

15                 THE CHAIRMAN: Yes.

16                 MR. PYZER: Outside -- they were prepared  
17          by the two industries, so it was not a public process  
18          in that respect.

19                 MR. FREIDIN: Q. Mr. McNicol --

20                 MR. PYZER: I am sorry, Mr. Chairman, I  
21          should clarify that. I think once the draft was  
22          prepared, they were then vetted throughout all of the  
23          provincial organizations and I believe the list we went  
24          to was the list that was used for circulation of  
25          environmental assessment documents.

1                   So groups like the OFAH, the AOMF, the  
2 Cottager's Association for Ontario, all of the  
3 provincial groups, once the draft was prepared was  
4 circulated to that group by the consultant for review  
5 and comment and I believe it was also sent to municipal  
6 governments as well.

7                   MR. MARTEL: Is there an opportunity --  
8 let's say someone disagreed with a certain aspect of  
9 it, were they in a position just to accept or request  
10 some change in the draft?

11                  In other words, was the input just  
12 agreeing with the document or was there an opportunity  
13 to make changes?

14                  MR. PYZER: Absolutely, it was a request  
15 for suggested changes, and I would emphasize that it  
16 was the consultant that did that, not MNR, the  
17 consultant was the one who prepared the best draft he  
18 could with all other interest groups input recognizing  
19 it was those two industries that were primarily  
20 involved.

21                  MR. FREIDIN: Q. Back to you Mr.  
22 McNicol. During your evidence and, in particular,  
23 during cross-examination by Ms. Swenarchuk, you  
24 referred to the District Land Use Guidelines and the  
25 Strategic Land Use Plans as identifying moose?

1 MR. McNICOL: A. Correct, yes.

2 Q. You also made reference to the 1980  
3 Moose Habitat Guidelines, do you recall that?

4 A. I believe the reference was the 1980  
5 Moose Habitat Policy.

6 Q. All right. I am showing you a  
7 document. Are you familiar with that document and, if  
8 you are, can you advise what that document is?

9 A. It is the Moose Management Policy.

10 Q. What is the date of it?

11 A. It's dated 1980, that would be  
12 December 15th, 1980.

13 MR. FREIDIN: Mr. Chairman, I would like  
14 to mark that document as the next exhibit, please.

15 THE CHAIRMAN: Exhibit 377.

16 ---EXHIBIT NO. 377: Moose Management Policy, dated  
17 December 15, 1980.

18 MS. SWENARCHUK: Mr. Freidin...

19 MR. FREIDIN: I don't have extra copies.  
20 I don't have extras. Mr. Chairman, I just made enough  
21 copies for the Board.

22 THE CHAIRMAN: Will you undertake --

23 MR. FREIDIN: I think the counsel who  
24 would like -- maybe they can follow along.

25 THE CHAIRMAN: Do you want to use one of

1       our copies someone? We can share one. Do you want to  
2       use this for now? Here is another extra copy.  
3       (handed)

4                    MR. FREIDIN: This particular document  
5       was a response to an interrogatory asked in Panel No. 1  
6       and, in addition to having difficulty getting ahold of  
7       Mr. Mander this morning, and I guess with all the  
8       things we had to do this morning, I apologize we didn't  
9       advise the other counsel about these documents.

10                  Q. Now, would you refer to the first  
11      paragraph of the policy. Can you advise, in paragraph  
12      1.0, are those the program targets that you referred to  
13      during your evidence, although in your evidence you  
14      referred to them being in the District Land Use  
15      Guidelines and the Strategic Land Use Plans?

16                  MR. McNICOL: A. Those are the targets  
17      referred to.

18                  Q. Does this 1980 Moose Management  
19      Policy contains guidelines for moose habitat -- I am  
20      sorry, does the 1980 policy contain a section which  
21      indicates a policy for moose habitat?

22                  A. There is a statement in the document  
23      with regard to habitat management.

24                  Q. I believe it commences at the bottom  
25      of page 3?

1                   A. It does.

2                   Q. Does it continue on to page No. 4?

3                   A. It does.

4                   Q. Down to -- so what we are referring  
5         to is on page 4, includes all of what is paragraph No.  
6         8?

7                   A. That's correct.

8                   Q. Can you advise, is this the 1980  
9         Moose Habitat Policy that you referred to in your  
10      evidence?

11                  A. It is.

12                  Q. Could you advise whether this policy,  
13         the whole document is more comprehensive than dealing  
14         with moose habitat only?

15                  A. It deals with the full range of  
16         management options, harvest control, enforcement,  
17         population management, yes.

18                  Q. Thank you. My next question is for  
19         you, Mr. Ward.

20                  During cross-examination by Mr. Williams  
21         you were questioned on your 1983 letter which has been  
22         marked as Exhibit 367.

23                  During that cross-examination you made  
24         the comment that the cost of a lake survey was  
25         approximately \$2,000 and that the value of the wood

1 around the lake may be less than that. You recall  
2 giving that evidence?

3 MR. WARD: A. I do.

4 Q. Now, in relation to just those two  
5 things that you compared, the value of the standing  
6 timber and the cost of a lake survey, on what basis did  
7 you make the statement that the value of the wood  
8 around the lake may be less than the cost of a lake  
9 survey?

10 A. Well, all the wood around the lake  
11 may not be merchantable timber and you have different  
12 stocking densities and different sizes of trees and so  
13 on. So there is different values there that are  
14 inherent in the shoreline reserve in terms of what the  
15 wood is worth to either the pulp and paper industry or  
16 the saw mill industry.

17 Q. And whether in fact the values were  
18 more or less than the cost of a lake survey would have  
19 to be determined on a case-by-case basis?

20 A. Yes.

21 Q. Another question for you, Mr. Ward,  
22 which arose as a result of the cross-examination on  
23 Thursday evening by Mr. Williams, and he was asking you  
24 a number of questions about lake surveys.

25 One question asked was whether it would

1       be in the best interest of both the high level of  
2       protection and the economic interest of the company -  
3       he didn't say what kind of company, but I assume he was  
4       referring to the forest company - to do a lake survey  
5       before and after timber management for determination of  
6       the actual impact.

7                          Do you remember questions along those  
8       lines?

9                          A. Yes, I do.

10                         Q. You indicated that such surveys were  
11       not designed for that purpose, lake surveys were not  
12       designed for that purpose and that there were a lot of  
13       factors to evaluate when assessing effects of timber  
14       management. You also made reference to trend through  
15       time data would be required, as well as matters such as  
16       control areas. Do you recall that evidence?

17                         A. I do.

18                         Q. You were then asked the following  
19       question:

20                         "Would you like to see this approach  
21       applied across the board?"

22                         You answered:

23                         "Yes, I would like to see the program  
24       instituted."

25                         My question for you is: When you said:

1 "I would like to see the program instituted", what was  
2 the program that you were referring to?

3 A. The program that the ESSA consultants  
4 will be talking about I believe in Panel 8 and will be  
5 discussed and referred to as the monitoring program in  
6 Panel 16, I believe.

7 Q. Thank you. Mr. Kennedy, the next  
8 question is for you.

9 Mr. Williams was very active on Wednesday  
10 evening and he asked you some questions as well, and  
11 the topic turned to the question of wetlands and  
12 whether wetlands were part of the forest resource.

13 You indicated that in the majority of  
14 cases wetlands would not support trees or equipment and  
15 if a specific concern about them arose during timber  
16 management planning you would see the wetlands  
17 reflected in a values map.

18 Do you remember giving evidence in that  
19 regard?

20 MR. KENNEDY: A. Yes, I do.

21 Q. Can you advise me, Mr. Kennedy, are  
22 there areas which are permanently wet which would be  
23 classified as part of the production forest?

24 A. Yes, there are.

25 Q. Is it possible that some people would

1 call those areas wetlands?

2 A. Yes, it is.

3 Q. Now, quite apart from what a wetland  
4 might be defined as, if there is a concern by anyone  
5 about the potential of timber management activities in  
6 such an area detrimentally affecting non-timber values,  
7 does the timber management planning process address  
8 that concern and, if so, how?

9 A. It would be addressed primarily  
10 through the area of concern planning process once the  
11 values or features or concern has been identified.

12 Q. Okay. Another question along -- in  
13 relation to the same topic. Would a forester ever be  
14 concerned about operating in such an area quite apart  
15 from a concern about non-timber values?

16 A. Yes, they would.

17 Q. Could you provide me with an example  
18 or two of such concern about operating in wet areas  
19 such as these? In other words, why might there be a  
20 concern about operations in such an area?

21 A. One of the obvious concerns would  
22 just be the mobility of man and equipment in a  
23 particular area such as that during the harvest and  
24 renewal phases.

25 Q. Would there be any concern re the

1 effects of the equipment being in that area?

2 A. Yes, there would be a concern over the  
3 potential damage that could result from timber  
4 management activities.

5 Q. And Mrs. Koven in a question referred  
6 to the development of these high floatation tires,  
7 would that be something which would have some relevance  
8 to that concern?

9 A. Yes. If you are looking at -- a  
10 specific example would be concern over the possibility  
11 of rutting which could be caused by damage from  
12 skidding equipment that's using narrow tires and that's  
13 one of the reasons that gave rise to the use of high  
14 floatation tires to avoid rutting.

15 Q. Thank you. I have a question which I  
16 want to address to each of the witnesses who were asked  
17 by Mr. Williams who took certain courses which he  
18 described, so I am not too sure -- my notes don't tell  
19 me whether he asked every one of you about that, but  
20 let me just indicate to you the line of questioning  
21 that I am referring to.

22 Mr. Williams asked a number of you  
23 whether you had taken professional courses during your  
24 tenure with the Ministry of Natural Resources re four  
25 matters, and the four matters that he described as

1 being the title of the courses were: 1, optimization  
2 of resource benefits; No. 2, integrated resource  
3 management and tradeoffs in decision-making; 3,  
4 resource valuation; and, 4, dealing with uncertainties  
5 in making public policy choices.

6 Now, let me go to you first, Mr. McNicol.  
7 Can you advise whether one can become knowledgeable  
8 about the subject matters of the courses Mr. Williams  
9 referred to through experience as opposed to taking  
10 professionals courses?

11 MR. McNICOL: A. The school of hard  
12 knocks, yes, you can.

13 Q. Have you been in the school of hard  
14 knocks Mr. McNicol?

15 A. For about 12 years, yes.

16 Q. Can you advise me, have you ever  
17 lectured or trained people in any of the subjects or  
18 portions of the topics referred to by Mr. Williams in  
19 his description of the courses? And I can go through  
20 them again with you if you want me to?

21 A. In the course that I presented with  
22 Mr. Kroskie concerning integration of moose habitat  
23 management and forest management, elements of all of  
24 those described courses, if you will, were touched on,  
25 not dealt with at length, but certainly touched on.

1                   In the presentation that I have made  
2                  through timber management planning teams in the  
3                  structured TMP courses, courses that are taken by  
4                  individuals that will be involved in timber management  
5                  planning processes, again, I have dealt with the  
6                  integration of moose habitat into the forest management  
7                  perspective.

8                   So, again, we have dealt with many of the  
9                  matters that would have been dealt with in formal  
10                 courses.

11                  Q. Mr. Ward, the same question. Can you  
12                 become knowledgeable about the subject matters of the  
13                 courses Mr. Williams referred to through experience as  
14                 opposed to taking professional courses?

15                  MR. WARD: A. Yes, I believe so.

16                  Q. Have you been in the school of hard  
17                 knocks as referred to by Mr. McNicol?

18                  A. Yes, about the same length of time.

19                  Q. Can you advise whether you have ever  
20                 lectured or trained people in any of those subjects or  
21                 portions of the topics referred to by Mr. Williams in  
22                 his description of the courses?

23                  A. Not really.

24                  Q. All right. Mr. Pyzer, do you agree  
25                 with the general proposition that you can become

1       knowledgeable through experience as opposed to  
2       profession courses?

3                     A. I do.

4                     Q. And have you lectured or trained  
5       people in any of those subjects or portions of the  
6       topics referred to by Mr. Williams in his description  
7       of the courses?

8                     A. I have. When I was the policy  
9       officer for northern Ontario, the position that Mr.  
10      Clark has, I presented a course here at Lakehead  
11      University to the graduating class of forestry on each  
12      of those four subjects on an annual basis.

13                  As well, with several of the user groups,  
14       again on exactly those points, particularly during the  
15       preparation of District Land Use Guidelines and  
16       Strategic Land Use Planning, I did present those  
17       seminars, if you will, and workshops at various user  
18       group forums, the NOTOA convention, meetings with the  
19       Ontario Federation of Anglers & Hunters.

20                  I have also given speeches, if you will,  
21       at user group forums in the northern region in Cochrane  
22       and internally in terms of training MNR staff in terms  
23       of district land use planning and land use planning in  
24       general.

25                  Q. Thank you: Mr. Clark, do you agree

1       that you can become knowledge through experience as  
2       well as taking courses?

3                    MR. CLARK: A. I do.

4                    Q. And the same question, have you ever  
5       lectured or trained people in any of those subjects?  
6       The same question.

7                    A. Yes, I have, and my background would  
8       be very similar to Mr. Pyzer's. My university  
9       experience was at Algoma University College, which is a  
10      satellite branch and I have had considerable experience  
11      in terms of Ministry training programs that I would say  
12      related to all the aspects identified here.

13                  Q. Mr. Kennedy --

14                  MR. KENNEDY: A. Yes, I have attended  
15      the school of hard knocks.

16                  THE CHAIRMAN: Did you graduate?

17                  MS. BLASTORAH: After the hearings.

18                  MR. FREIDIN: Q. Have you lectured or  
19       trained people in any of the subjects or portions of  
20       the topics referred to by Mr. Williams in his  
21       description of the courses?

22                  MR. KENNEDY: A. Yes, I have been  
23       involved in several training exercises and lectured  
24       on -- in a limited capacity.

25                  Q. In relation to all or just some of

1 the topics?

2 A. I would say in some of the topics. I  
3 would not claim any expertise in dealing with  
4 uncertainty in making public policy choices in the  
5 capacity that I have been employed.

6 Q. Thank you. Mr. Beechey, same  
7 questions just in relation to your experience?

8 MR. BEECHEY: A. Yes, I would say I  
9 could relate a similar experience in terms of the  
10 school of hard knocks for about the same number of  
11 years.

12 I haven't taken any professional courses  
13 in any of these areas but, again, in my area of  
14 specialization I do make it a point to do a certain  
15 amount of lecturing and presentation, I think my resume  
16 reflects that.

17 Traditionally, I played an integral role  
18 in the development of the implementation strategy for  
19 areas of natural and scientific interest, and with any  
20 policy development or guidelines development, that  
21 required a number of presentation to various groups  
22 within the Ministry, policy committee and the various  
23 field committees, management committees at field level.

24 Q. Thank you.

25 THE CHAIRMAN: I must admit, Mr. Freidin,

1       that a 12-year course almost approximates a specialty  
2       in medicine. It is like an awfully long course.

3                    MR. FREIDIN: I think it is continuing,  
4       Mr. Chairman.

5                    Q. Mr. Clark, during the  
6       cross-examination of you by Mr. Hunter there was  
7       reference to the use of the phrase "deciding function"  
8       which Mr. Hunter indicated appeared at page 8840 of the  
9       transcript.

10                  Can you just remember talking about that  
11       phrase that you used in your evidence, deciding  
12       function? I am not asking you to describe it. Do you  
13       recall dealing with that?

14                  MR. CLARK: A. Yes, I do.

15                  Q. You indicate in response to one of  
16       his questions that your direct evidence was not  
17       intended to indicate that main office makes most of the  
18       decisions.

19                  You indicated in your answer that the  
20       Ministry of Natural Resources encourages local  
21       decision-makers to make decisions in the context of the  
22       local situation but within the framework of corporate  
23       direction.

24                  Now, I will put the question to you and  
25       if somebody else -- if you feel uneasy answering it and

1 want to refer it perhaps to Mr. Kennedy you can do so.

2                   In the Environmental Assessment Document  
3 there are a number of amendments which were made  
4 regarding notice to Indians of the timber management  
5 planning process. My question is: In relation to  
6 those amendments, can you advise at what level of the  
7 organization was that decision made to make those  
8 amendments and include those provisions in relation to  
9 notice?

10                  A. I believe it was a corporate  
11 decision. The ultimate decision would have been made  
12 at the main office level.

13                  Q. Okay. In Exhibit No. 5, page 245,  
14 you don't have to refer to it, it is a letter from Mr.  
15 Douglas from the Ministry of Natural Resources to Mr.  
16 Krasnick of the Ontario Native Affairs Directorate and  
17 there is reference that MNR would go to Indian reserves  
18 if invited to explain timber management matters.

19                  Can you advise at what level of the  
20 organization that decision or direction came from?

21                  A. That would have been a main office  
22 decision.

23                  Q. Thank you. The next question for  
24 you, Mr. McNicol.

25                  Mr. Williams asked you if status reports

1 contained - these are status reports in relation to  
2 COSEWIC - contained information that was site\_specific  
3 in nature in the Ontario context.

4 You indicated that the status reports  
5 were prepared in a national context and generally did  
6 not contain site-specific Ontario information.

7 My question for you is: Do those status  
8 reports contain any information that is useful in the  
9 general Ontario context and, thus, of potential use in  
10 timber management planning?

11 MR. McNICOL: A. Very much so in that  
12 the status reports deal with habitat requirements for  
13 the species that's under consideration and, given that  
14 information, it is very useful for a biologist to  
15 determine both present and future habitats for that  
16 particular species in the Ontario context.

17 I might add that the impression I gave  
18 may have been that there is not site-specific  
19 information available at the provincial level; however,  
20 obviously, if that species existed in Ontario there  
21 would be information that will be relevant to that  
22 particular issue with regard to some site\_specific  
23 information and the occurrence of that species in  
24 Ontario.

25 Q. Thank you. I am going to refer --

1 start this question with Mr. Clark because the question  
2 was put to him, but if any of you can add any  
3 additional information to the answer I would ask you to  
4 do so after Mr. Clark is finished.

5 During the examination in relation to the  
6 number of employees in the forestry program as opposed  
7 to other programs, Mrs. Koven made the observation that  
8 historically the forestry side had been very dominated  
9 until recent years.

10 Now, Mr. Clark, your response to that  
11 comment was that you don't vote in the district on the  
12 basis of numbers, that as a district management you had  
13 to listen to input from all programs, that you didn't  
14 count the numbers of people inputting and that the  
15 Ministry of Natural Resources is an IRM Ministry. Do  
16 you remember giving that evidence?

17 MR. CLARK: A. I do.

18 Q. Now, you gave an example of the  
19 Ministry being an IRM Ministry, the fact that timber  
20 technicians may be doing compliance work which is  
21 extremely relative to the objectives of the wildlife  
22 program, you also said that the benefits from a timber  
23 technician doing his or her job could accrue to other  
24 programs. Do you remember giving that evidence?

25 A. I do.

1                   Q. Can you give an example or two of  
2 where other programs or how other programs would  
3 benefit from the work of the timber technician?

4                   A. Well, there is a number of areas and  
5 I think probably Mr. Kennedy and Mr. McNicol can expand  
6 on them, but one example would be a lot of air photo  
7 work gets done in a district and it may be done  
8 initially specifically for timber management purposes,  
9 but the results of that activity may be very important  
10 to the wildlife program.

11                  Likewise, operational cruises provide  
12 information that's specifically collected for timber  
13 management, but may be very important to a wildlife  
14 biologist who is making recommendations on specific  
15 sites in a management unit. Those will be two examples  
16 that immediately come to mind.

17                  Q. Mr. Kennedy, can you add anything to  
18 that?

19                  MR. KENNEDY: A. Again, there are  
20 occasions where there are specific projects undertaken  
21 by timber staff to assist others. One example is the  
22 use of timber staff to conduct aerial moose inventory  
23 surveys as both navigators and also as observers on the  
24 flights.

25                  And I think perhaps the next best example

1       is the regular field inspections that are conducted by  
2       timber technicians, the observations that they make  
3       through all the interests MNR has and those individuals  
4       reporting back of their observations in the field.

5                     Q. Would those observations be in some  
6       way connected to the other programs, the non-timber  
7       programs?

8                     A. Yes, they are. For instance, during  
9       cut inspection it is common practice to look at such  
10      things as stream crossings and road locations,  
11      boundaries of harvested areas. Similarly, during  
12      inspections of ongoing silvicultural activities, staff  
13      are in the areas that are within the management unit  
14      and keeping their eyes and ears open, so to speak, and  
15      reporting back any irregularities both related to  
16      timber management activities and also from any  
17      enforcement-related problems.

18                    Q. I understand that those matters --  
19      those latter matters will be discussed in Panel No. 16?

20                   A. That's correct.

21                   Q. Mr. McNicol, can you add anything?

22                   MR. McNICOL: A. I have always referred  
23      to forest technicians as the eyes and ears of the field  
24      organization. They are out in the field more often  
25      than any of the other technical staff at the district

1 level.

2 At a course that I was a sessional  
3 lecturer at at Lakehead University regarding  
4 environmental impacts of forest management practices, I  
5 always made a point of talking to the second year  
6 forest techs and indicating to them for an organization  
7 that espouses the merits of integrated resource  
8 management, that it is extremely important that they  
9 keep their eyes and ears open with regard to all types  
10 of information relevant to all programs within the  
11 Ministry.

12 I must say that in Thunder Bay District  
13 and other districts where I had experience talking to  
14 other biologists, that those individuals are extremely  
15 important in terms of bringing site-specific and  
16 pertinent information to all programs and, in  
17 particular, fish and wildlife.

18 Q. Are you able to add anything, Mr.  
19 Ward?

20 MR. WARD: A. I have had similar  
21 experiences with obtaining information from timber  
22 technicians in the field and I know in Ignace, for  
23 example, one timber technician was probably more  
24 involved with how water crossings were constructed than  
25 some of our fish and wildlife staff and I actually

1       dealt with him on some issues there, so it varies  
2       depending on the types of people that you have in  
3       various districts.

4                     Q. Mr. Clark, this morning in  
5       cross-examination by Mr. Campbell, Mr. Campbell  
6       indicated to you that we have to rely on the planning  
7       process which will draw out the information that you  
8       need to make decisions and you indicated -- you agreed  
9       with that, you said that's correct. Do you recall  
10      that?

11                  MR. CLARK: A. Yes, I do.

12                  Q. When you say or when you agreed that  
13       you have to rely on the planning process to draw out  
14       this information, were you including in the planning  
15       process --

16                  MR. CAMPBELL: Just a minute, just a  
17       minute. Before Mr. Freidin makes any suggestions, I  
18       have no objection to him asking what was included in  
19       the planning process, but I don't think it is  
20       appropriate for him to make suggestions.

21                  MR. FREIDIN: Q. Mr. Clark, could you  
22       advise, when you say that you rely on the planning  
23       process to draw out that information, what is  
24       encompassed within the planning process?

25                  MR. CLARK: A. Well, I think throughout

1 much of the evidence presented in this panel we have  
2 referenced the consolidation of background information,  
3 the development of a values map and the area of concern  
4 process whereby we identify the most -- what values are  
5 significant, what alternative means of protecting those  
6 values exist, and make final recommendations on how  
7 they should be treated in the timber management plan.

8 And in the course of that process, and in  
9 the course of assessing effects, we are very much  
10 involved in assessing the quality of the data that we  
11 are using. So I guess it is within the context of that  
12 total process we have spoken to in this panel and we  
13 will be doing elsewhere that I was responding to that  
14 particular question.

15 MR. FREIDIN: An hour and five minutes,  
16 Mr. Chairman, those are my questions.

17 THE CHAIRMAN: Thank you, Mr. Freidin.

18 MR. FREIDIN: Oh, I am sorry, sorry,  
19 there was one matter.

20 Q. There was an undertaking that was  
21 given in relation to the number of areas of natural and  
22 scientific interest where there had been statements of  
23 interest, and I understand, Mr. Beechey, you have the  
24 information in relation to that undertaking as it  
25 relates to the area of the undertaking?

1 MR. BEECHEY: A. Yes, I do.

2 Q. Perhaps you could just read the  
3 information into the record?

4 A. This is in reference to Exhibit No.  
5 322, the map of southern Ontario, showing existing and  
6 proposed areas of natural and scientific interest and  
7 Exhibit 323 is a similar map for northern Ontario.

8 Our information is that we have nine  
9 statements of interest completed and approved for the  
10 '89 nominated ANSIs shown on those two exhibits. There  
11 is an additional 39...

12 MS. SWENARCHUK: Excuse me, could you  
13 slow down please, Mr. Beechey.

14 MR. BEECHEY: There is an additional 39  
15 statements of interest prepared for 102 proposed areas  
16 of natural and scientific interest on those two  
17 exhibits. Of those 39, 12 of them have been approved  
18 by the regional directors.

19 MR. FREIDIN: Q. Is that it?

20 (no response)

21 That concludes my examination, Mr.  
22 Chairman.

23 THE CHAIRMAN: Thank you, Mr. Freidin.

24 Ladies and gentlemen, before we move to  
25 the next item of business, I want to advise you about

1 some scheduling that the Board has decided upon for  
2 when we return in February.

3                 First of all, the Board has decided that  
4 it is going to take a little bit of time off during the  
5 high school spring break, but I want to emphasize that  
6 we have devised a method of making up the time that  
7 will be lost in that regard.

8                 Unfortunately, southern Ontario and  
9 northern Ontario do not coordinate their high school  
10 breaks, it is just a fact of life. As far as I have  
11 been able to ascertain, the school break for northern  
12 Ontario commences effectively on March the 13th, for  
13 the week of March 13th ending on the 17th, with the  
14 children going back to school on the Monday, which is  
15 the 20th.

16                 For southern Ontario, the school break  
17 appears to start on the 20th and ends on the 27th,  
18 which is Easter Monday, the 24th being good Friday. So  
19 the kids evidently go back to school on the 28th.

20                 Now, the Board is going to adjourn for  
21 the period March 13th through March 27th because, in  
22 our view, it would be unfair if we are going to take a  
23 break at that time to deprive those people living in  
24 northern Ontario, including one of the Board members,  
25 to not have the advantage of being with their families

1 and their children for that school break.

2 Now, what we propose to do, however, is  
3 we propose to sit the last two days of February which  
4 are the 27th and 28th; and the first week of March,  
5 starting on the Wednesday, through that complete week  
6 including the Friday. So we are going to sit for a  
7 five-day week from February 27th through March the 3rd.

8 And we are also suggesting that the  
9 parties get to Thunder Bay Sunday evening so that we  
10 have an early start on the Monday and have a complete  
11 week and that way we think we will make up probably a  
12 couple of days in terms of what we would otherwise sit  
13 for a four-day week starting at one o'clock on Monday.

14 In addition, it is the Board's intention  
15 to sit starting on Tuesday, March 28th, because I think  
16 it would be unfair to try and schedule anything for  
17 March 27th which is Easter Monday, so we will start on  
18 the 28th, sit the 28th, 29th, 30th, and also the Friday  
19 the 31st.

20 MR. COSMAN: What time?

21 THE CHAIRMAN: Sorry?

22 MR. COSMAN: What time on the 28th?

23 THE CHAIRMAN: On the 28th we will start  
24 at 1:00 because people will most likely be arriving  
25 that morning.

1                   Now, in addition to that, and something I  
2 overlooked, we are also going to sit for a five-day  
3 week starting on March the 6th, going the 6th, 7th,  
4 8th, 9th and 10th. And, again, we would like the  
5 parties to arrive in Thunder bay on the Sunday evening  
6 March the 5th.

7                   Now, in view of that particular schedule  
8 for that month, we will be sitting approximately the  
9 same numbers of days that we have tried to maintain at  
10 a schedule for most of the Mondays.

11                  MR. CAMPBELL: Mr. Chairman, on those  
12 five-day weeks what would be the finishing hour  
13 proposed for Friday?

14                  THE CHAIRMAN: Probably on Fridays we  
15 would be finishing around 2 o'clock to get back on the  
16 5:40 plane, so that you are back into the south around  
17 seven o'clock or something like that.

18                  MR. FREIDIN: Did you have the two weeks'  
19 holiday after the two five-day weeks sort of  
20 intentionally.

21                  THE CHAIRMAN: Yes, and again what we are  
22 trying to maintain is some kind of consistency with the  
23 schedule, but by the same token I think in fairness to  
24 everybody who have families we have to take into  
25 account some other concerns as well.

1 Now, with respect to the summer vacation,  
2 the Board has given this some consideration and it is  
3 very difficult, as you are aware, to arrive at  
4 something that is satisfactory for everybody. But the  
5 Board has come to the conclusion that, again, it will  
6 serve the best interests of the hearing and all the  
7 parties if the Board plans to adjourn for the month of  
8 July and the first week of August.

9 There is a couple of holidays, July 1st  
10 and August 1st in there and it will give some people  
11 some overlap into July and August and it will allow  
12 people to arrange for their kids to attend summer camps  
13 and have vacations with their parents and that kind of  
14 thing.

15 So we will nevertheless try and make sure  
16 that as much evidence is heard by the Board as  
17 possible. You probably have seen a slight change in  
18 the last week or so in terms of the Board being quite  
19 willing to sit longer hours, where deemed necessary,  
20 and that may continue in the future depending on, to  
21 some extent, where we end up with after our discussions  
22 which are about to follow.

23 THE CHAIRMAN: Mr. Williams?

24 MR. WILLIAMS: Mr. Chairman, has a  
25 schedule for February been issued as yet? I haven't

1       seen it.

2                     THE CHAIRMAN: No, for February no, it  
3       hasn't been issued other than the fact that we intend  
4       to come back, as you are aware, I think it is February  
5       1st.

6                     MR. WILLIAMS: Yes.

7                     THE CHAIRMAN: And we would intend to sit  
8       right through February, probably on a four-day week,  
9       Monday through Thursday as in the past.

10                  MR. WILLIAMS: I wanted to know whether  
11       the specific dates had been set seeing as we all had  
12       our calendars out and we could all mark them up having  
13       dealt with March.

14                  THE CHAIRMAN: Well, looking at the  
15       calendar, it appears that January the 30th is the  
16       Monday, and is there any problem, Mr. Freidin, with  
17       starting on the Monday from your perspective?

18                  MR. FREIDIN: I am not aware of any  
19       problem.

20                  THE CHAIRMAN: Well, we might as well  
21       commence on Monday at 1:00 p.m. on January the 30th.

22                  MR. WILLIAMS: Mr. Chairman, didn't that  
23       raise a problem in the minds earlier in starting  
24       earlier than the Board had estimated to other parties?  
25       I think you raised that earlier on, we hadn't decided

1 what day of the week February 1st was before we thought  
2 about it.

3 THE CHAIRMAN: Well, you see February 1st  
4 brings it into the Wednesday and that means,  
5 effectively, we are going to lose most of that week.

6 I am just wondering what problems will be  
7 caused by just issuing a further notice to the parties  
8 on the party list of starting January the 30th.

9 I mean, there is enough time between now  
10 and February that people can readjust their schedules.  
11 I take it Mr. Freidin you are going to have no problem  
12 with getting all the witness statements completed by  
13 January the 30th as opposed to February 1st?

14 MR. FREIDIN: Well, I think that is going  
15 to have a big effect, Mr. Chairman.

16 THE CHAIRMAN: So I think what we will do  
17 is we will just revise the notice to all parties and we  
18 will put it on the Board's machine et cetera, that we  
19 will be recommencing Monday, January 30th at 1:00 p.m.,  
20 and we will continue on a four-day schedule ending on  
21 the Thursday, as we have in the past, essentially  
22 through February.

23 Now, there may have to be the odd  
24 adjustment when we get down there because of things we  
25 cannot foresee at the moment, but we will advise.

1                   MS. SWENARCHUK: Four weeks you are  
2 talking about?

3                   THE CHAIRMAN: That looks like four weeks  
4 in February and the fifth week in February we will be  
5 starting on the 27th, which we have already alluded to.

6                   Okay. So that will settle some of those  
7 items, and we will issue further directions after the  
8 March break or in February with respect to April, May  
9 et cetera.

10                  We intend, with the exception of the  
11 March break, to push on in a fairly steady manner until  
12 the summer break and then break for the summer as  
13 indicated and then get back in August, the second week  
14 of August and push on resolutely towards our appointed  
15 destiny towards the end of this hearing, if any one is  
16 bold enough to even contemplate an end.

17                  But anyways, I hope that will be helpful  
18 to the parties in making their plans for the summer and  
19 also the March break.

20                  Now, we want to continue on with what the  
21 Board considers to be of some importance as well and  
22 that is the discussion with respect to the Board's  
23 suggestions on scoping. Are the parties ready to  
24 address this matter at this time?

25                  The panel might be dismissed at this

1 point, thank you. Many of you will be returning to  
2 grace our presence, I understand, in a future panel.  
3 Goodbye for now.

4 ---(Panel withdraws)

5 THE CHAIRMAN: Now, I take it after your  
6 deliberations of yesterday on the matters we are about  
7 to discuss you have all reached a unanimous agreement  
8 and it is just a matter of you putting your position  
9 forward to the Board which we will find, of course,  
10 completely acceptable and just adopt and we can  
11 probably end this session in about five minutes.

12 Is that correct, Mr. Campbell?

13 MR. CAMPBELL: That is exactly correct,  
14 Mr. Chairman.

15 I rise in the role of reporter of  
16 discussions not a bearer of unanimity and consensus.  
17 These matters have been seriously considered by all  
18 counsel who are present here today and were discussed  
19 yesterday following the hearing. There were a number  
20 of points which I would describe as reflecting the  
21 various aspects of that discussion.

22 I cannot report to the Board that there  
23 is unanimity on any one of these points, but I think  
24 what my job here is, is to try and give the Board a  
25 sense of where that discussion went.

1                   And I will deal with these points within  
2 my reporter capacity and then I would like to make just  
3 a few remarks in addition to that which reflect I guess  
4 our view of the matter in a more particular way than  
5 the kind of general discussion that I am reporting on.

6                   There are really seven points that I wish  
7 to bring to the Board's attention as having been  
8 discussed at the meeting yesterday. I intend basically  
9 simply to read these, having drafted them, and I have a  
10 couple of extra copies of what I am working from, if  
11 that would be convenient for the Board. It might save  
12 you having to write it all down.

13                  THE CHAIRMAN: Okay, that will certainly  
14 be more convenient for the Board. Thank you, Mr.  
15 Campbell.

16                  Do most of the other parties have this as  
17 well, Mr. Campbell?

18                  MR. CAMPBELL: Yes, I provided it to all  
19 counsel before we commenced this morning, Mr. Chairman.

20                  THE CHAIRMAN: Thank you.

21                  MR. CAMPBELL: With respect to the topic  
22 of scoping the first point is this:

23                  That there is a serious practical problem  
24 with carrying out the scoping exercise immediately  
25 prior to calling the evidence.

1                   First: Counsel calling the evidence will  
2 have wasted preparation time on those matters for which  
3 a ruling was made that they are not to be dealt with  
4 in-chief. Second, it is the view of counsel that it is  
5 simply not reasonable to ask counsel and witnesses to  
6 reorganize and call their direct testimony immediately  
7 at the conclusion of the scoping session at which the  
8 determination on issues was made.

9                   Second: It is not necessary for a  
10 statement of issues to be filed by the party who filed  
11 the relevant witness statement. The executive summary  
12 serves the purpose of identifying what that party views  
13 as the important matters in relation to that panel.

14                   Third: It is appropriate to require  
15 other counsel to file a statement of issues raised by  
16 the filing for that panel. A period of two weeks in  
17 advance of the panel's appearance is suggested. This  
18 period would allow for adjustment of the  
19 evidence-in-chief and the statements, here I am  
20 referring to the statements of issue filed, would give  
21 the Board yet another tool to control wandering  
22 cross-examination.

23                   Item 4: No agreement could be reached on  
24 the proposed one-day limit for direct evidence. The  
25 view most often expressed was that this was

1           inappropriate. The reasons expressed included the fact  
2           that the Board had already made a finding that changing  
3           such a procedure during the course of the proceedings  
4           was not fair and that the direct evidence was in fact  
5           giving an emphasis to the evidence which was not  
6           otherwise available and was important for  
7           cross-examination and other purposes.

8                 Fifth: There is a fundamental problem in  
9                 the Board making a binding determination as to what  
10          constitutes an issue and making orders affecting  
11          parties' rights to address issues on the basis of what  
12          will necessarily be limited submissions of counsel made  
13          prior to the evidence being called.

14                 This is not a hearing which occurs  
15          regularly and deals with similar issues on an ongoing  
16          basis; rather, it is a hearing which is unique in  
17          almost every respect.

18                 Prior to the oral testimony it is  
19          difficult for both counsel and, in our submission, the  
20          Board, to discern the relative importance being  
21          attributed to the various aspects of the evidence.

22                 Sixth point: There was also a sentiment  
23          that the proposal was premature in that the ruling made  
24          by the Board in September has not yet come into play.  
25          It should be recalled that that ruling reflected a good

1 deal of consensus amongst the parties as to the steps  
2 which could and should be taken to promote a more  
3 efficient process.

4 In trying to advance this proposal, that  
5 is, the Board's proposal we ran into the same problem  
6 as we had previously; namely, that it is difficult to  
7 give meaningful advice to a client on this matter  
8 without the balance of the proponent's evidence.

9 And the 7th point is that -- and you will  
10 note that there is a correction from many to some --  
11 some felt that if given more time the response that we  
12 present to you could be a little tighter and that there  
13 was good reason to permit sufficient time to counsel to  
14 see if this could be achieved.

15 Mr. Chairman, I make that report. I  
16 think in my judgment it accurately reflects the tone  
17 and scope of the discussions which took place. I would  
18 like to sort of add to that a little bit.

19 You have asked counsel to deal with this  
20 matter. Counsel, I can advise you, are more than  
21 slightly aware of the Board's determination to have  
22 this process operate in an efficient and effective  
23 manner. We are all prepared to do what we can in the  
24 context of providing advice to our client, our  
25 respective clients and in the context of our

1       obligations to represent their interests we are all  
2       prepared to do whatever we can to achieve those  
3       purposes.

4                  I think if I am to be frank in presenting  
5       my views to the Board, I have to say that I sense a  
6       perception that the Board is coming dangerously close  
7       to stepping into that relationship that requires  
8       counsel to represent a client in the best and most  
9       appropriate way which, in his or her judgment, he is  
10      able to do.

11                 I think it goes without saying that no  
12      one wants to extend this hearing beyond what is  
13      necessary to adequately represent their client's  
14      interest. But let me use, for instance, the one-day  
15      limit -- the question of the one-day limit on direct as  
16      an example.

17                 It seems to me if one is looking at the  
18      proponent's case, for example, that some of the  
19      propositions which they would be asking this Board to  
20      accept and the conclusions that they would be asking  
21      the Board to reach depend, in a very material way, on  
22      your assessment of the witnesses who appear before you.

23                 I don't make any argument for Mr. Freidin  
24      on this matter, but the fact of the matter is that the  
25      only way the Board can do that fairly is to permit

1       those witnesses an adequate opportunity to present  
2       their views on matters in their own way and that can,  
3       in a practical sense and in a very real way, only  
4       happen through direct testimony.

5                 THE CHAIRMAN: You do not feel that this  
6       can be accomplished through a limited direct testimony  
7       and cross-examination and re-examination?

8                 MR. CAMPBELL: I think, Mr. Chairman,  
9       there are aspects of the proponent's case - and I  
10      suspect there will be for other peoples' cases - where  
11      it is important that the witnesses have the opportunity  
12      to cover their material in their own way and  
13      cross-examination is reactive in that sense, rather  
14      than giving that sense of where the emphasis in the  
15      evidence should be given.

16                 THE CHAIRMAN: You don't feel that we can  
17      ascertain this in a full day of evidence?

18                 MR. CAMPBELL: I think to say a day is...

19                 THE CHAIRMAN: And, in other cases, with  
20      leave of the Board, more than a day?

21                 MR. CAMPBELL: Well, I think to set the  
22      day, Mr. Chairman, does not address the underlying  
23      concern. I feel that an arbitrary limit, which a day  
24      is, you have to recognize it as such. To say an  
25      arbitrary limit, simply puts an inappropriate pressure

1       on the parties preparing to call that direct and I  
2       think it doesn't give, quite frankly, sufficient credit  
3       to the counsel involved who are well aware of the  
4       Board's feelings on this matter. And I think you can  
5       argue about specific examples, but if I look back, for  
6       instance at this last panel, it took three days to go  
7       in.

8                   Mr. Freidin no doubt thought it was very  
9       important to spend that time, we were fully aware of  
10      the Board's views on this matter. And I will be quite  
11      frank, it was very important for my client to sit here  
12      and listen to that in the way it was presented because  
13      it gave perspective to that evidence that, in my  
14      submission, would not have been available without that  
15      direct testimony.

16                  Now, I come back then, Mr. Chairman,  
17      again, speaking for our position on this matter, the  
18      desire to move this hearing along, make it operate  
19      efficiently was a desire that was, in large measure,  
20      behind Mr. Castrilli's motion.

21                  There are a number of new steps which  
22      have been put in place. I think there is general  
23      agreement that the kind of identification of issues  
24      process that is outlined here would assist in that  
25      regard. It is certainly my recommendation to you that

1       supplemented by that statement of issues list, that  
2       there is very little to be lost and quite a lot to be  
3       gained by letting the measures which you have taken in  
4       your various rulings proceed.

5                 If six weeks after the beginning, again  
6       in the new year, or whatever time you feel is necessary  
7       to make a fair judgment as to whether those steps are  
8       working and counsel are living up to the kind of  
9       obligations that I think we are all prepared to  
10      undertake in this matter - the Board reaches a  
11      different conclusion, then the matter need not -- is  
12      not frozen forever, but I think there have been a  
13      number of things done. There has been an increasing  
14      awareness of the Board's concerns in this regard and an  
15      increasing awareness that we have to be conscious of  
16      that at all times in our appearances before you.

17               And, in my submission, the steps that are  
18      proposed, particularly the limitation to one day, have  
19      caused significant concern amongst all counsel and  
20      while -- and, as I say, in the face of a number of  
21      steps which have been taken, have been ordered but have  
22      not yet gone into implementation, it is premature.

23               And, as I say, I start and end this  
24      discussion with the view that there is no benefit in  
25      being conserved in being anything less than perfectly

1       frank on all these matters and I hope that the remarks  
2       which are offered, both in general as a reporter and in  
3       specific speaking for my particular interest, will be  
4       accepted in that light and that the intentions of all  
5       counsel in this matter are received with some  
6       recognition of the sincerity in which they are offered.

7                     THE CHAIRMAN: Thank you.

8                     Does anybody else have anything  
9       specifically to add in addition to or contrary to what  
10      Mr. Campbell has presented to the Board specifically?

11                    Ms. Swenarchuk?

12                    MS. SWENARCHUK: Having taken the  
13      position earlier in the year that one or two hours' of  
14      direct examination would be adequate, I think I really  
15      am obliged to explain that I continue to believe that a  
16      limit on direct could be beneficial.

17                    However, I think such a limit could only  
18      be imposed and could only be effective if all counsel  
19      were in agreement and clearly all counsel are not.

20                   With respect to...

21                   THE CHAIRMAN: Just a moment. You are  
22      saying that it can only be effective if all counsel are  
23      in agreement; in other words, you wouldn't support it  
24      if there weren't a total consensus?

25                   MS. SWENARCHUK: Oh, I continue to

1 believe that that will be an effective measure. I  
2 think we might be arguing in a different forum if the  
3 Board were to proceed on that path on its own, speaking  
4 practically again.

5 I would simply underline as well that I  
6 think that the limit on one day of direct should be  
7 somewhat flexible in that, for example, with the  
8 witness who truly needs to use demonstrative evidence  
9 as Mr. Beechey in the last panel, for example, or as  
10 was our position earlier in the year with respect to  
11 witnesses who are lay people and non-experts, I think  
12 they should have the wide defendant latitude to state  
13 their evidence orally. I think that is the appropriate  
14 method for non-experts, but I would not hold such a  
15 witness...

16 THE CHAIRMAN: Well, we are only  
17 suggesting this limit with respect to parties  
18 represented by counsel and, in effect, panels for which  
19 witness statements were presented and that often  
20 wouldn't include lay witnesses.

21 MS. SWENARCHUK: But it could include lay  
22 witnesses; could it not?

23 THE CHAIRMAN: It could, but often it  
24 wouldn't. In other words, what we are saying is, is  
25 that our suggestion was to limit the direct

1       evidence-in-chief where we felt, in many cases, it was  
2       adequately set out in the witness statement of the  
3       parties who are required to present witness statements.

4                 If we were to come to the conclusion that  
5       we were going to impose that limit it would not apply  
6       to unrepresented parties nor cases where witnesses did  
7       not have their evidence presented in the form of  
8       witness statements as well. I don't know if that makes  
9       any difference to your submission or not.

10               MS. SWENARCHUK: Would it be your  
11       position that all non-expert witnesses represented or  
12       testifying or a party represented by counsel would be  
13       subject to these same witness statement requirements as  
14       all expert witnesses?

15               THE CHAIRMAN: Well, it depends what you  
16       are talking about, non-expert witnesses. We certainly  
17       wouldn't apply those kinds of rules to what we have  
18       euphemistically referred to as the lay public. In  
19       other words, when we are going on the road or even in  
20       Thunder Bay, members of the public that come in that  
21       want to say something, even though they might be  
22       affiliated with a particular group --

23               MS. SWENARCHUK: Like, for example, if I  
24       were to call a member of the public from a certain area  
25       of northern Ontario to give an account of a certain

1 type of forest-related incident in his or her area,  
2 that person would be required to file a witness  
3 statement in advance?

4 THE CHAIRMAN: No, I don't think in those  
5 cases the Board had contemplated there would be witness  
6 statements for that type of witness. We are really  
7 looking at the witnesses who are expert witnesses--

8 MS. SWENARCHUK: Yes.

9 THE CHAIRMAN: --used to giving opinion  
10 evidence and their evidence can often be reduced to  
11 writing as opposed to the anecdotal or life experience  
12 type of situation that the unprofessional witness, if I  
13 can call that kind of person, in that fashion would  
14 present.

15 Thank you, Ms. Swenarchuk.

16 Mr. Cosman?

MR. COSMAN:

17 Thank you, Mr. Chairman.

18 Mr. Chairman, I submit that really there  
19 are two issues. The first is the issue of scoping and,  
20 the second, and I suggest quite an independent and  
21 discreet issue, is the issue of whether there should be  
22 a restriction on examination-in-chief and I will  
23 address each of those points separately.

24 First of all, scoping. It is quite clear  
25 from the literature involving environmental assessment

1       that scoping has become a very important and developing  
2       concept. You have described it as establishing terms  
3       of reference, establishing appropriate boundaries to  
4       environmental assessment.

5                  In a recent article by Wright and Green  
6       in the Journal of Environmental Management, they  
7       describe it as setting the temporal and spacial  
8       boundaries within which the assessment will be carried  
9       out. In another context, and I think most appropriate  
10      to our context, it has been called the identification  
11      and focus on specific issues.

12                 I say this is important because we must  
13       look at scoping in the legal context of the right of  
14       the parties to a full hearing as prescribed by statute.  
15       You cannot take the concept of scoping as it is  
16       developed in jurisdictions, for example, where there is  
17       no hearing, and draft it into our process in a way  
18       which will be inappropriate.

19                 In my respectful view, scoping in a sense  
20       of focusing on and identifying issues is a very  
21       important feature which I think you can incorporate in  
22       your process, and I suggest that the discussion last  
23       night resulted in a proposal, as set out particularly  
24       in Item 3 of Mr. Campbell's memorandum, which will be  
25       helpful to you in terms of scoping.

1                   I would like to start with the positive,  
2 so I would like to start with what we have come back to  
3 you with as a proposal and that is: If the parties'  
4 witnesses -- if they have received the witness  
5 statement or been given the opportunity to state in a  
6 similar form to that which Mr. Campbell has himself  
7 done when he did his cross-examination, the point at  
8 issue they want to address, I think that it would help  
9 to focus both the evidence-in-chief because then, for  
10 example, if Mr. Campbell had done that two weeks before  
11 the examination, Mr. Freidin's examination-in-chief  
12 might have been different.

13                  And, by the identification of issues by  
14 the parties, this will be a focusing both in the oral  
15 examination-in-chief and in the cross-examination. So  
16 in that respect I support Mr. Campbell in his proposal  
17 with respect to Item 3 which you will see is a  
18 suggestion that there be a period of two weeks in  
19 advance of a panel's appearance for the exchange of  
20 issue statements or statements of issues that a party  
21 wishes to address or intends to address in his or her  
22 cross-examination.

23                  I also agree with Item 2 which is the  
24 suggestion that the executive summary serves the  
25 purposes of identifying what the proponent's views are

1 and the reason that it would be unnecessary for the  
2 proponent to state what the issues are. The reason I  
3 support that is, and we all have experience in this,  
4 until such time as the proponent to the proposal has  
5 stated we disagree with this or this is an issue, the  
6 proponent is in the position of saying everything is an  
7 issue as far as I am concerned and that's why I put the  
8 evidence before you and, in my view, you should hear  
9 the panel. It is an issue and I will lead evidence  
10 depending upon what I understand to be the specific  
11 issues that parties intend to raise.

12                   Unfortunately, unlike the Ontario Energy  
13 Board or some other tribunals who either have an  
14 exchange of pleadings or prefiling, if the proponent  
15 had all of the evidence on the other side by reason of  
16 a prefiling, the proponent himself can say this is an  
17 issue and give you an issues list, but the proponent,  
18 and for that matter, when I come to present my witness  
19 statements, will have no idea except what he can gain  
20 through cross-examination of might be coming or what  
21 the issues are.

22                   So that we are in a position where we  
23 have to include -- in fact, find it necessary that we  
24 would want to include all in our witness statements  
25 because we won't know what the issues are when we

1           prepare those witness statements.

2           If we have an exchange of those witness  
3         statements, if we have an exchange of pleadings --

4           THE CHAIRMAN: Apart from the exchange of  
5         pleadings, is that not now what the proponent and  
6         parties in effect are going to be doing in preparing  
7         the witness statement, putting in everything they feel  
8         is necessary that they would like to cover in their  
9         witness statements, complete the executive summary  
10       giving an overview of what is there in a shorter and  
11       concise way?

12           MR. COSMAN: That's my point, that's why  
13       I support Item 2, because I think that that statement  
14       with the executive summary will give you what the  
15       proponent believes is essential and important to his  
16       case.

17           What I am saying to you is the proponent  
18       does not know what the issues are when this is being  
19       prepared. What I am saying is it will be redundant,  
20       unnecessary and counterproductive to produce an issues  
21       list in addition to that which is already going to be  
22       produced.

23           THE CHAIRMAN: It really depends on the  
24       form of the executive summaries. If the executive  
25       summaries include more than just identification of the

1 issues - that is why the Board felt maybe an issues  
2 list would focus it further - if the executive  
3 summaries, in effect, just include identification of  
4 the issues within the witness statement, then we  
5 probably agree it serves the same purpose.

6 MR. COSMAN: It may be --

7 THE CHAIRMAN: It may be a matter of  
8 form.

9 MR. COSMAN: I think it is important that  
10 the proponent indicate what is important in their case  
11 and people will see that through the executive  
12 summaries.

13 THE CHAIRMAN: That's why we put some  
14 kind of limit on the executive summary in terms of its  
15 length in order to try and -- the proponent or whoever,  
16 for example, in preparing the witness statement what  
17 they feel amongst the mass of information is important.

18 MR. COSMAN: I guess my point here, Mr.  
19 Chairman - and we will obviously have to address that  
20 when we prepare and compile our witness statements - we  
21 are not going to file anything we don't consider to be  
22 important. We are not going to take your time, we are  
23 not going to take our time in preparing a statement  
24 which contains material that we do not consider to be  
25 important with respect to the many diverse problems and

1       issues that are involved in an undertaking of this  
2       kind.

3                     THE CHAIRMAN: But everything you  
4       consider important you must agree may not be an issue?

5                     MR. COSMAN: Until there is a list, until  
6       somebody says that's not an issue we have to treat it  
7       is as important and that's why we will have to present  
8       it to you.

9                     Because at the end of the day when our  
10      turn is gone, we can't afford for someone to stand up  
11      and say we haven't heard anything on this and this is  
12      an issue. It might be eight months from now or in  
13      North Bay or Sioux Lookout that someone stands up and  
14      says there is no evidence before you. Do we then turn  
15      to the case that the reply evidence becomes  
16      evidence-in-chief?

17                    THE CHAIRMAN: You do not get to a  
18      position where reply evidence turns into  
19      evidence-in-chief, but reply evidence can be used in  
20      appropriate circumstances as the check, as the  
21      safeguard, as the method by which if something which  
22      was an issue or turned out to be an issue which was  
23      previously thought not to be an issue, the Board  
24      through more lenient use of the rules regarding reply  
25      evidence makes sure that that evidence is before the

1           Board. This is a possible way.

2                 But it is not meant in any way, shape or  
3                 form to take over the role of direct evidence in the  
4                 first place.

5                 MR. COSMAN: I guess what I am saying, Mr.  
6                 Chairman, on that point is that an issue by definition  
7                 is a point of difference between parties, that's what  
8                 an issue is. When the proponent is presenting his case  
9                 and when we are presenting our case, we have not  
10                received anything in advance from our opponents to know  
11                what they disagree about and we won't be in a position  
12                to say these are the issues. The qualifying of one of  
13                my experts is an issue, the way in which a particular  
14                mill operates is an issue. It takes two to tango.

15                THE CHAIRMAN: We know we have to start  
16                somewhere and where we are starting in this case is the  
17                witness statement that is going to present essentially  
18                the proponent's view of the case and that's where all  
19                the other parties in response to the proponent's case  
20                starts from. To make it easier for them, in terms of  
21                going through the evidence, we have an executive  
22                summary supposedly which is --

23                MR. COSMAN: Which highlights the  
24                important points.

25                THE CHAIRMAN: Which highlights the more

1           important points out of a mass of evidence.

2           There must be some points the proponent  
3        considers more important than the others. All parties  
4        preparing the witness statement would be in that  
5        position.

6           The next point from that is determining  
7        which issues are in fact in issue amongst other parties  
8        and that is where your suggestion and the parties'  
9        suggestion in terms of exchanging issues statements  
10      might be helpful in advancing and allowing the parties  
11      an opportunity to reorganize their direct evidence in  
12      response to what they now perceive to be actually in  
13      issue.

14           Okay, that's another step in the process.

15           MR. COSMAN: Yes.

16           THE CHAIRMAN: Then if the issues are in  
17        fact identified appropriately by those issues  
18        statements, the Board would probably be looking at a  
19        way to say: These are the matters which are at issue,  
20        these are the ones which will be addressed in one  
21        fashion or another. Any that turn up in the sense of  
22        becoming issues that weren't so identified might be  
23        able to be covered off throughout reply evidence, if  
24        that became a problem.

25           MR. COSMAN: Then if I may, Mr. Chairman,

1       I think that -- I mean it is clear under what the  
2       parties have presented as an alternative to the  
3       proposal. But I do want to come back to what we  
4       consider or what I consider, and everyone can speak to  
5       themselves, I join Mr. Campbell in that this is a  
6       fundamental problem with the proposal, and because we  
7       are dealing in a quasi-judicial process, we are aware  
8       of that.

9                     The Board must avoid the temptation, and  
10      I suggest the legal error of entering the arena as  
11      mediator or arbitrator of issues, because to do that,  
12      as the law -- the courts has said many times, would be  
13      putting you in the position of making decisions on  
14      matters in the absence of evidence.

15                    You will not have heard the evidence  
16      until you have heard the evidence that this is an issue  
17      or this is a more important issue. I suggest that the  
18      party --

19                    THE CHAIRMAN: Not even if the evidence  
20      is before us in the form of the written statements?

21                    MR. COSMAN: That is only one side of it.

22                    THE CHAIRMAN: Well, we are certainly not  
23      tampering with any rights of cross-examination.

24                    MR. COSMAN: No, but in order to say that  
25      this is an issue and this isn't, or this has more

1 priority than that, you will have to make, in your own  
2 minds, a prejudgment of matters which will come out in  
3 the evidence and, in my respectful view, that is an  
4 error, that would involve you in an error of law. That  
5 is my concern.

6 So my suggestion, once again coming back  
7 to the constructive, if I can, is that as with the  
8 Energy Board, the Energy Board does not say this isn't  
9 an issue generally unless it is a matter of -- it is  
10 not within the jurisdiction of the Board or it is  
11 irrelevant, clearly having regard to the environmental  
12 assessment itself, but the Energy Board, as I  
13 understand it - and Mr. Campbell can correct me if I am  
14 wrong - the Board staff members will list them and  
15 categorize them if possible. The point is the parties  
16 have still defined the issues.

17 THE CHAIRMAN: Are you objecting to the  
18 Board's suggestion that the category, or what may be a  
19 category of certain issues may not be in issue at all?

20 MR. COSMAN: Not at all, that's  
21 determined by the parties.

22 THE CHAIRMAN: That's right. The second  
23 category that we alluded to were ones where there is a  
24 matter in issue because obviously some parties are not  
25 in agreement and at least wish to cross-examine. The

1       Board might consider that that issue is articulated  
2       enough in the written form, in the written witness  
3       statement.

4                    MR. COSMAN: I think that would be a  
5       fundamental error.

6                    THE CHAIRMAN: On what basis?

7                    MR. COSMAN: On the basis that this Board  
8       is constituted of three experienced environmentalists  
9       or environmental specialists but not specialists in  
10      timber management. You do not have, with great  
11      respect, the background to make a judgment that there  
12      is sufficient evidence relating to a particular issue  
13      in a written statement.

14                  THE CHAIRMAN: But do not the parties  
15      decide whether there is sufficient evidence in the  
16      sense that any parties in opposition to anything in the  
17      written statement cross-examine at length, put in  
18      anything else and challenge in any way they wish,  
19      through proper and appropriate cross-examination, what  
20      is in the written statement and -- just a moment, and  
21      then in the event that the proponent or the person or  
22      the party calling that panel feels that the Board has  
23      not got the appropriate picture through just the  
24      cross-examination and what's in the written statement  
25      would then have the opportunity in reply evidence to

1        rebut both in answering issues and matters that arose  
2        in cross-examination but also expand, if they thought  
3        necessary, in reply evidence on what is in the written  
4        statement.

5                  You see, here is the point: If in fact  
6        the Board felt it had enough in the written statement  
7        to articulate what the matter is about and explain it,  
8        and if the parties did not agree that they have had  
9        ample opportunity to present cross-examination, and if  
10      at the end of that cross-examination the proponent came  
11      to the conclusion that because of what was raised in  
12      cross-examination and because the Board felt that they  
13      had enough, it is not necessary, in reply, to deal with  
14      everything.

15                In other words, in cross-examination  
16      certain issues may not be joined by the parties or  
17      through the Board's own questioning and, as you know,  
18      the Board takes an active part in both the presentation  
19      of evidence-in-chief and cross-examination when it  
20      feels it does not understand or wants clarification.

21                Where is your submission that the Board,  
22      in those circumstances, does not have the appropriate  
23      evidence before it?

24                MR. COSMAN: It is absolutely clear in  
25      law, in my respectful view, that you have the right to

1 ask for clarification of evidence, there is no question  
2 about that.

3 THE CHAIRMAN: You mean the Board?

4 MR. COSMAN: The Board, yes.

5 THE CHAIRMAN: Okay.

6 MR. COSMAN: The problem, I submit, is  
7 that the Board does not have the basis - and I come  
8 back to Mr. Freidin's suggestion or question the other  
9 day - the one of criteria, on which you were going to  
10 make such a decision. The Board does not have the  
11 basis on which to say that is enough or this is  
12 sufficient.

13 THE CHAIRMAN: Is not not making that  
14 decision up front really making the decision after the  
15 reply evidence?

16 MR. COSMAN: What would happen is that  
17 reply would be something other than what it is in the  
18 normal sense.

19 THE CHAIRMAN: It may.

20 MR. COSMAN: But the problem is that, for  
21 example, if you had said this is enough on this  
22 subject; first of all, the proponent, and for that  
23 matter myself, when we have to prepare the witness  
24 statement, we would not have known that a particular  
25 item necessarily was going to be in issue, take that as

1       a matter --

2                   THE CHAIRMAN: Under your suggestion--

3                   MR. COSMAN: Let me follow --

4                   THE CHAIRMAN: --if we were to follow  
5       your suggestion in paragraph 3, you might then know.

6                   MR. COSMAN: We wouldn't know before we  
7       write it, even with the suggestion.

8                   THE CHAIRMAN: That's true.

9                   MR. COSMAN: What we do is we receive the  
10      written statements two weeks before the panel, we  
11      receive a list of issues and then all of sudden Mr.  
12      Freidin says: Well, you know, goodness me, Ms.  
13      Swenarchuk is interested in this particular matter. I  
14      did not elaborate on it, I have not dealt with it in  
15      any way, expanded on it in any way in writing, I want  
16      to elaborate on it in my evidence.

17                  My suggestion to you is he should be  
18      permitted to do that in his evidence-in-chief. Ms.  
19      Swenarchuk is going to be very unhappy if after her  
20      cross-examination Mr. Freidin does it in his reply.  
21      She may want the right to cross on that expanded area  
22      that's come out in reply. That's the major concern  
23      that I have, speaking for myself, and I know it is  
24      shared by other people, Mr. Chairman, with respect to  
25      that suggestion.

1                   So my suggestion is to allow the parties  
2 to define the issues by the suggestion that is made  
3 here. Don't yourselves enter into that arena and  
4 attempt to make predeterminations as to whether or not  
5 there is sufficient evidence on an issue in writing and  
6 that such oral examination-in-chief will not be  
7 required. That's all I have to say on the issue of  
8 scoping itself.

9                   We support it in principle if it is done  
10 properly in the context of a quasi-judicial proceeding  
11 and the exchange of witness statements. We do not feel  
12 there should be a restriction on oral  
13 examination-in-chief under the concept of scoping.

14                  Now, I want to go to the second point and  
15 that is the suggestion of a restriction on  
16 evidence-in-chief of one day. I have a number of  
17 points to make on that.

18                  My first point is that the Board, after  
19 extensive argument and after reserving on the matter,  
20 made a ruling on that very subject at an early stage in  
21 this hearing. The ruling was that, for reasons of  
22 fairness, there should not be a change of horses  
23 midstream because the MNR has, to a certain point in  
24 the hearing, been able to lead evidence without that  
25 kind of arbitrary restriction.

1                   The other parties should not now be  
2                   subject to it and, if that was valid - and I suggest it  
3                   was - then there is no reason to alter it at this time  
4                   and, in fact, a fortiori the position is even stronger  
5                   this time.

6                   THE CHAIRMAN: With one possible  
7                   suggestion. I suggest, Mr. Cosman, that a number of  
8                   other factors now have to be taken into account,  
9                   meaning that at the time that the particular ruling was  
10                  made we had not yet gotten to the position of talking  
11                  about focusing, by way of issue statements, we had not  
12                  gotten to the point of really dealing with executive  
13                  summaries in a meaningful way and all of the witness  
14                  statements in the entire case of the proponent were not  
15                  in, things like that.

16                  MR. COSMAN: My submission --

17                  THE CHAIRMAN: In other words, that is  
18                  not the only thing that might change.

19                  MR. COSMAN: Mr. Chairman, what I suggest  
20                  hasn't changed is the rationale for the decision in the  
21                  first instance. But, in any event, let me join with  
22                  Mr. Campbell in saying let's see if the other  
23                  suggestions which are coming into play with Panel 8  
24                  work and, in that respect as well --

25                  THE CHAIRMAN: And if they don't?

1                   MR. COSMAN: I suggest they will. I  
2 suggest to you --

3                   THE CHAIRMAN: We hope they will, but if  
4 they do not, for some reason - and we are all  
5 experimenting with this area - after having gone "x"  
6 number of months into the hearing...

7                   MR. COSMAN: No. 1, I don't think in my  
8 review of the evidence that there has been any abuse to  
9 date of the right to examine-in-chief. I think that  
10 there has been very little repetition, there is always  
11 a little bit but there has been very little.

12                  Counsel, with direction of the Board on  
13 that point, has tried very hard to ensure that there  
14 won't be unnecessary repetition. I think that the oral  
15 examination has helped the parties to highlight the  
16 issues. My cross-examinations would be much longer,  
17 but for the examination-in-chief.

18                  I mean, if I can do it in place of Mr.  
19 Freidin I would want to bring out, when I conduct my  
20 cross-examination, certain things. I suggest that a  
21 lot of the parties' cross-examination are shorter. I  
22 did not think there has been any abuse of it.

23                  If we are looking for a corrective device  
24 I don't think in the past there has been an abuse. I  
25 think there is a lot of material all burdened by the

1 weight of the paper but I don't think -- and the number  
2 and weight of the issues, but I think that's inherent  
3 in this particular undertaking, in particular, this  
4 assessment. I really do not think in any way that  
5 counsel to date can in any way be faulted for causing a  
6 problem.

7 So that since, in my view, there has not  
8 been abuse to date, we shouldn't assume it is not going  
9 to work in the future. In fact, with the new  
10 mechanisms the Board has brought into place, I submit  
11 it will work even better, it will work better than with  
12 the arbitrary limit.

13 As you know, there is in the Statutory  
14 Powers Procedure Act under Section 10 the provision  
15 that there is a right to call and examine witnesses,  
16 and clearly if there is something repetitive to what is  
17 in the witness statement it shouldn't be allowed.

18 If it is something that is irrelevant to  
19 the hearing, it shouldn't allowed. But I submit that  
20 if counsel is acting properly and professionally and  
21 within the limits of the responsibility that he or she  
22 has, that the Board should not say, and particularly  
23 should not say now at this stage in the hearing, that  
24 we are only going to give you one day or two hours or  
25 whatever. So those are my submissions on that point.

1                   You may find that my examination-in-chief  
2 would be, with respect to certain panels, less than a  
3 day, some may be more than a day, it depends upon the  
4 nature of the evidence.

5                   I can assure you - and I know I speak for  
6 all counsel here - that we are not going to abuse the  
7 process, I would ask you to rely on us to do that. If  
8 you feel there is an abuse by repetition or  
9 irrelevancy, you can call us to task.

10                  THE CHAIRMAN: If the Intervenor Act ever  
11 gets passed, that's a possibility.

12                  MR. COSMAN: Okay. And also, with  
13 respect, because it goes to that point as well with the  
14 point of scoping with respect to oral  
15 examination-in-chief, because when I write my  
16 statement, if I don't know what is written in their  
17 statement or whether something is going to be in issue,  
18 it may be essential for us to focus on and elaborate on  
19 oral evidence once we know they are in issue.

20                  Those are my submissions, Mr. Chairman.

21                  THE CHAIRMAN: Thank you, Mr. Cosman.

22                  Mr. Hunter?

23                  MR. HUNTER: I will keep my remarks very  
24 brief, Mr. Chairman.

25                  First let me say that I think what you

1 have been presented with by Mr. Campbell represents a  
2 very fair and objective review of the comments that  
3 were given by counsel last night.

4 I think you have a very difficult task,  
5 now faced with having to control the dogs of war and I  
6 don't envy you. Let me also say that I have a very  
7 substantial sympathy with your concerns; that sympathy  
8 is also a matter of self interest to me and my clients  
9 because we do not have the resources to wage battle  
10 over an extended period of time and we must be very  
11 selective when we can appear before you on matters that  
12 we have to deal with in our cross-examination and  
13 obviously in our examination.

14 So, therefore, I think that from our  
15 perspective, and certainly from my perspective, I have  
16 no great difficulty as a question of principle with  
17 scoping, although my views and concerns on those  
18 matters have been presented to you very fairly by Mr.  
19 Campbell and I won't repeat them.

20 I think one of them is a part of  
21 attempting to understand what those rules would be and  
22 let me try to be very clear in terms of my concern.

23 I believe that your decisions to manage  
24 this hearing, if I may respectfully submit, will be  
25 better taken once you have before you the body of the

1 information as presented by the proponent and I believe  
2 I will be in a much better position to address the  
3 concerns that you have in substantive terms once I too  
4 have read that material.

5 In other words, the strength of an  
6 argument to require scoping or defining of issues from  
7 my perspective will be better undertaken and better  
8 understood once I have seen the body of the material  
9 that is before me.

10 THE CHAIRMAN: Well, I am assuming that  
11 none of that would take place if anything is adopted  
12 until all of the witness statements have been served  
13 and all of the parties, including the Board, know what  
14 the proponent's case is, at least in written form.

15 MR. HUNTER: I think the choice of any  
16 amount of time, whether it be one day or two days or  
17 three days, it may appear and could be a rather  
18 arbitrary figure. I am in the position, and I don't  
19 want to appear before this Board at some subsequent  
20 point with my clients to ask favours from anybody. So,  
21 therefore, I think that what is good for the goose  
22 should be good for the gander in this instance and,  
23 therefore, if it is reasonable and fair in some  
24 instances for MNR to take more than a day with their  
25 evidence, then I am afraid I have to live with that

1 because I think, certainly in my case, we will be more  
2 than one day in terms of the evidence that we will be  
3 presenting to you, although I don't know how much  
4 longer it is going to be.

5 I think, as Mr. Campbell has said, candor  
6 is important. I think I have said to the Board before  
7 that this hearing may be about the environment, it may  
8 be about timber management, it is also about  
9 decision-making, so I don't share with Mr. Cosman his  
10 concern that there is no substantial ability on your  
11 part to try to direct the hearing and I guess you can  
12 attempt to do it in one of two ways.

13 You can say: Mr. Hunter, we have heard  
14 your evidence and aren't you getting repetitive and I  
15 can say: It is my right to be repetitive. And you can  
16 say: Yes, and it is my right not to have to listen to  
17 you any more.

18 That is one way of dealing with the  
19 problem; perhaps not the most effective, but certainly  
20 one that would send a chill down the back of any  
21 competent lawyer.

22 The other is as has been presented to you  
23 today, is to attempt simply to come up with a  
24 procedural structure which everyone can live with. I  
25 am not as wedded as some counsel are to the Statutory

1 Powers Procedures Act, and I certainly am very  
2 sympathetic to administrative tribunals attempting to  
3 fashion and structure reasonable procedures which are  
4 effective and which are fair.

5 And, obviously, I think that I would,  
6 therefore, commend to you some of the comments that Mr.  
7 Campbell did say and I guess it really is a question of  
8 looking at 6 and 7 and perhaps suggesting gently to you  
9 that there may be some prematurity in your comments and  
10 that perhaps once we have a better feel for and  
11 understanding of the rest of the proponent's case that  
12 we might all be in a better position to make some  
13 decisions of the procedures.

14 Those are my comments, sir.

15 THE CHAIRMAN: Thank you.

16 Mr. Freidin?

17 MS. MURPHY: Mr. Williams.

18 THE CHAIRMAN: Oh, sorry, Mr. Williams.  
19 I wonder if you have anything?

20 MR. WILLIAMS: Mr. Chairman, I too, as  
21 Mr. Hunter has stated, Mr. Cosman, are appreciative of  
22 the way in which Mr. Campbell capsulized the major  
23 concerns that were addressed last evening by counsel,  
24 at least to some extent, and I think fairly and  
25 objectively does put forward the major concerns within

1           those seven areas of concern.

2                 Perhaps the ones with which I am  
3 personally, on behalf of my client, having the greatest  
4 difficulties with are 4 and 5. There hasn't been much  
5 discussion with No. 1 being more mechanical in nature  
6 than the other two which come more to matters of  
7 principle.

8                 Certainly it is in our self interest that  
9 these hearings be expedited and conducted fairly and  
10 fully in the shortest period of time for the reasons  
11 stated quite eloquently by Mr. Hunter in which I  
12 certainly reiterate ten-fold, given that looking at the  
13 constraints under which they have operated, we have  
14 operated under even more severe constraints and given a  
15 lack of supportive availability of resources that they  
16 have accomplished, and so that we have worked under  
17 even greater handicaps in that particular area and that  
18 is the nature of the undertaking at this point in time.

19                 And so we are constantly aware of the  
20 benefits to us of trying to streamline the process in  
21 order that we will be able to have the resources left  
22 to us to see us through the whole process.

23                 So I don't think there is any question  
24 but that we are all of one mind and wanting to do that  
25 the Board is endeavouring to do.

1                   I think that what Mr. Hunter said a few  
2 moments ago perhaps was not addressed to the extent it  
3 should have been by other counsel, but I think it is a  
4 very valid observation, that perhaps in taking these  
5 measures, that is the Board taking these new  
6 initiatives, that perhaps while you are pointing to a  
7 new direction and a new means of moving the process  
8 forward, that perhaps indeed it is a little premature  
9 to have to impose even further guidelines on counsel,  
10 given that we really haven't had the opportunity to let  
11 that earlier directive, which was very substantial in  
12 itself that came out of our earlier procedural  
13 discussions, really take effect and see how effectively  
14 they can take effect.

15                  And I think that that is a very valid  
16 consideration to be taken in mind by the Board, with  
17 respect, and that perhaps a waiting period of at least  
18 one more panel would allow that to be experienced.  
19 That is the judgment call that the Board has to make.

20                  I realize that with this panel past we  
21 really weren't able to take full advantage of some of  
22 those new directives and so that we are still all  
23 working in somewhat of a vacuum because persons haven't  
24 been allowed to demonstrate the validity of the  
25 initiatives you took earlier on.

1                   Mr. Chairman, I have no belief to hold  
2 for any of the other parties, other than for my own  
3 client in particular, but I have expressed from the  
4 outset, and I do again express reservations with regard  
5 to the constraints or what could be perceived as undue  
6 constraints that could be imposed on the front end of  
7 the process as identified in the Item 4 copy that we  
8 discussed last evening, because it can come back to  
9 adversely affect us at an appropriate point in the  
10 proceedings as well.

11                  There is the fundamental principle that  
12 the Board who is ultimately found and is better  
13 equipped than all of us to understand the need of the  
14 principles, the full and unfettered opportunity to  
15 present a case is fundamental to the process and if the  
16 constraints are to be imposed at the front end in any  
17 way, albeit well intentioned, it certainly does take  
18 away some of the initiative to which the proponent of  
19 his or her case is entitled and I think it reverses --  
20 it is almost like the reverse proof principle that you  
21 are left with having to try to make your case at the  
22 back end through re-examination after hearing the  
23 cross-examination if you haven't had a full opportunity  
24 to explore and utilize the initiative available in the  
25 evidence-in-chief undertaken.

1                   That is the perception I have and a  
2 concern I have and I just share that with you and that  
3 is why I again feel that -- and from the experience of  
4 this hearing, I haven't seen an abusive time factor  
5 with regard to presentation of evidence-in-chief.

6                   I don't know that, and I certainly  
7 haven't been here on all of the panels for the reason  
8 and fact that we have to be selective on which panels  
9 we can afford to be at and to participate in, but it is  
10 my understanding that the evidence-in-chief being  
11 introduced beyond the one day period has been limited  
12 and I guess the last panel was an example. But there,  
13 again, how much more was it beyond a day to really be  
14 significant and to the point of it really being  
15 counterproductive.

16                  I just don't see that any harm was done  
17 by reason or by virtue of the fact that a certain  
18 prescribed time limit had been exceeded and I think it  
19 is somewhat difficult, as Mr. Hunter put it to you, to  
20 have to come before the Board to ask for what is, I  
21 take to be, a fundamental right for an extended period  
22 of time to finish making the case at hand.

23                  I don't think I will belabour the point,  
24 Mr. Chairman. I think other counsel have already made  
25 that indication and I just reinforce it to the best of

1       my ability.

2                     THE CHAIRMAN: I guess, Mr. Williams -  
3       and this is for the benefit of all the other parties -  
4       I guess where the Board is having the greatest  
5       difficulty, and we are certainly taking into account  
6       your concerns, is the fact that what we are trying to  
7       prevent is just a repetition of what is before us in  
8       written form through oral presentation.

9                     We are not in the least suggesting that  
10      if oral evidence-in-chief goes well beyond what is in  
11      the written statement that counsel would not be  
12      entitled to present that evidence. What we are saying  
13      is that we are trying to find a fair avenue to say that  
14      if the evidence is in front of us through the witness  
15      statements in written form, then perhaps the oral  
16      testimony on that same evidence, where it doesn't add  
17      anything or substantially clarify anything in cases  
18      where clarification is perhaps not necessary because of  
19      the subject matter being dealt with, is it necessary  
20      for the Board to receive it twice, in effect, bearing  
21      in mind that the points in issue will be covered over  
22      likely by those parties cross-examining and the Board  
23      questioning as well.

24                     And bearing in mind that the party  
25      presenting the evidence in the first place will have a

1 further opportunity to further clarify matters arising  
2 out of cross-examination and, in instances where  
3 something arose that obviously needs more  
4 amplification, might be able to do so in reply. I  
5 mean, that is the sole purpose of what the Board is  
6 putting forth as its rationale for this suggestion in  
7 the first place.

8                   It is not in any way to circumscribe a  
9 party's right to present their case or to put the  
10 issues before the Board. It is the form in which those  
11 issues are coming before the Board, whether it is in  
12 written form or in oral form in terms of  
13 evidence-in-chief that the Board is seeking a fair way  
14 to see if that can't be circumscribed in some way to  
15 the benefit of everybody, including the parties and the  
16 Board.

17                   I mean, that was the intention and  
18 rationale for the Board putting forward the suggestion  
19 in the first place, there would be a category of issues  
20 that once they are set out through witness statements  
21 and the parties look at them say: Well, look, this is  
22 not a matter really in issue. We are not concerned  
23 necessarily about this particular matter, it is set out  
24 in writing, it is of a factual nature or almost the  
25 type of category that one can take judicial notice of,

1       it is something out there that doesn't need elaboration  
2       or comment by any of the parties. That issue hopefully  
3       can be disposed of in a very precipitous manner; that  
4       is, it doesn't have to be addressed by anybody further,  
5       it is in the witness statement, that is the end of it.

6                  It is the other categories where people  
7       say that the matter is in fact an issue, because we do  
8       not agree with what is stated, that the Board is  
9       looking for ways to perhaps curtail the oral  
10      presentation if, in fact, it is presented fully in  
11      writing.

12               Now, if it is not presented fully in  
13      writing and it needs explanation and amplification,  
14      then it would fall into the normal category which would  
15      be essentially that direct evidence-in-chief is  
16      allowed, as has been the case in this proceeding and  
17      other proceedings to date and that is all we are  
18      saying.

19               Now, there would not be all that many, in  
20      all practicality, there probably will not be that many  
21      issues that really fall into that category and  
22      certainly if the parties use their best efforts in a  
23      meaningful way to identify (a) on the part of the  
24      proponent which are the issues in the first place and  
25      (b) on the part of the other parties what issues they

1       identify from their perspective; i.e., by this  
2       statement of issues that you have suggested, perhaps  
3       that will go part of the way.

4                    MR. WILLIAMS: Certainly.

5                    THE CHAIRMAN: Because what we are trying  
6       to do -- don't get us wrong, we are not trying to  
7       interfere with the hearing process in any way that will  
8       be detrimental both to the Board, to the public or any  
9       of the parties; what we are trying to do is to design a  
10      more efficient process in order that everybody can  
11      consider the issues fully and the Board can arrive at  
12      an informed determination based on the evidence  
13      presented.

14                  And we are in the type of hearing that we  
15      fully recognize is quite new and different from what  
16      has occurred in the past, it is neither site-specific  
17      nor project-specific nor even issue-specific as the way  
18      many other hearings are that come before this Board.

19                  But, nevertheless, we feel obliged to  
20      take upon ourselves, with the assistance and hopefully  
21      full cooperation of counsel, whatever measures we can  
22      to try and come to a better hearing in terms of  
23      presentation, in terms of managing the documentation  
24      that is before us than we have experienced up to this  
25      point in time.

1                   MR. WILLIAMS: Well, Mr. Chairman,  
2     certainly the distinction you make is extremely  
3     important and well noted.

4                   I guess the concern I have is that that  
5     problem certainly has to be addressed as you have  
6     identified, and it certainly focus more clearly in on  
7     the concerns that the Board has, but I guess the  
8     question I raise is whether the mechanism of applying  
9     an arbitrary time restraint is the appropriate  
10    measure --

11                  THE CHAIRMAN: Well, we have told you  
12    from the beginning that we have not issued our  
13    suggestion in the form of a ruling or a decision, it is  
14    up for discussion. We have brought it up once before,  
15    we discussed it at that time.

16                  In our view, enough circumstances had  
17    changed with respect to the hearing process that it is  
18    worth a second consideration. We haven't yet arrived  
19    at a decision, I can assure you, on whether or not any  
20    arbitrary curtailment of time will be in fact ordered.  
21    This is the purpose of discussing it with counsel and  
22    with the parties.

23                  But, by the same token, I am not sure we  
24    a hundred per cent share counsels' submissions to the  
25    extent that: Let's wait until all of the other rulings

1 have taken full effect and let's go from there if we  
2 feel that further directives are needed in this area  
3 because, in our view - and we have given some thought  
4 to this - this is probably the most appropriate time if  
5 we are going to further refine the process rather than  
6 waiting until after Panel 8.

7                 The reason is, is that you are going to  
8 have a lengthy period of time before we come back, all  
9 of the witness statements are going to be presented by  
10 that time and it will have a very real bearing on what  
11 we decide as to the way other witness statements are  
12 prepared, although we fully understand that the  
13 proponent's statements will have been prepared, but  
14 whether or not the statement of issues, if that is what  
15 we decide on, or executive summaries, et cetera are  
16 formulated in some different manner, plus the fact that  
17 we are well into, at that point in time, almost up to  
18 the one year mark on the commencement of the hearing.

19                 And, again, if we are going to get full  
20 benefit of any of these streamlining procedures, then  
21 in our view it is time we got on with it. But we hear  
22 what you are saying. I mean, again, I am not  
23 addressing these comments specifically to you, Mr.  
24 Williams, I am using the opportunity to address them to  
25 everybody.

1                   MR. WILLIAMS: I understand, I  
2 understand. Just a couple of more comments, Mr.  
3 Chairman, because I don't want to be repetitive.

4                   I think Mr. Cosman, Hunter and Campbell  
5 have covered the salient features of the matter. I did  
6 highlight the ones that I had particular difficulty  
7 with, which is dealt with, and the other being the very  
8 difficult one I am wrestling with from a personal point  
9 of view and that is Item 5.

10                  I profess, Mr. Chairman, that I don't  
11 have the experience of other counsel in dealing with  
12 other quasi-judicial boards such as this and what  
13 experience I have had in seeing the need for the panel  
14 or the Board to have to try to assist counsel in  
15 focussing in on issues by involving itself directly in  
16 that determination process. It is just to me  
17 fundamentally important, and I am sure it would be the  
18 last resort of this Board to have to do that, but  
19 perhaps because I haven't, as I say, had that previous  
20 experience and I don't know if your Board is finding  
21 this to be a precedent-setting thing, that all other  
22 avenues being unsuccessful in accomplishing what you  
23 are setting out to do in concert with counsel to  
24 expedite the process, whether in fact there are  
25 precedents which can be referred to that would

1 indicate that with discretion this, I suppose, new  
2 venture, if it is, is something that can be effective  
3 if applied judicially and discreetly to the process.

4                   I just don't know how it can be because  
5 of, again, the predeterminations that have to be made,  
6 and I just don't know whether short of letting the  
7 parties themselves resolve what the issues will be,  
8 that it should be superimposed from above.

9                   Whether the Board should have that type  
10 of authority to make those decisions, I am just not  
11 really qualified to say whether --

12                  THE CHAIRMAN: Well, we are all in a new  
13 area, Mr. Williams, but I can assure you as Chairman of  
14 the Environmental Assessment Board itself --

15                  MR. WILLIAMS: You can do it as you see  
16 fit, I understand.

17                  THE CHAIRMAN: No, I was not going to say  
18 that, that may or may not be the case.

19                  But I was going to say that this  
20 streamlining of the hearing process is one of the  
21 issues that is of utmost importance to the Board as a  
22 whole. This is not the only hearing, as you are  
23 probably aware, that is ongoing nor is scheduled for  
24 the future. And, as a result, some control of the  
25 process must be obtained in the view of the Board as a

1 whole in short order in order to ensure that this  
2 particular application and others that come before the  
3 Board are handled in a more expeditious way.

4 And all we are saying is that I do not  
5 want to create the impression that this hearing is by  
6 any means the guinea pig, it isn't--

7 MR. WILLIAMS: I just --

8 THE CHAIRMAN: --because other  
9 initiatives have been taken in a number of other  
10 proceedings. But collectively the Board, as a whole,  
11 is looking at its past practices in terms of some of  
12 these issues we are discussing today and seeking to  
13 modify them appropriately with fairness as the  
14 overriding concern in such a manner that we can make  
15 some progress in terms of hearings that are tending to  
16 last under the Environmental Assessment Act  
17 particularly, whether it is under the Consolidated  
18 Hearings Act or under just the EA Act itself, in excess  
19 of a year and a half, two years and beyond.

20 And, again, in appropriate cases, and  
21 this may well be one of them, there may be absolutely  
22 no way that -- and I am not suggesting in any way that  
23 that might be improper in the appropriate case - but it  
24 is only in my view, and I would suggest in the view of  
25 my fellow Board members, appropriate in cases where

1       well thought out and well designed hearing procedures  
2       have been fully utilized.

3                 If it takes two years or two and a half  
4       years with scoping mechanisms in place and other  
5       hearing expediting procedures in place, so be it. What  
6       we are concerned about is that the hearing process  
7       before our Board specifically has just not developed to  
8       the stage where all of the procedures that can be  
9       utilized are in fact being utilized.

10               Frankly, up until this point, it has not  
11       been that necessary because we have not, until  
12       recently, been confronted with the very complex and, in  
13       some cases, contentious applications that are now being  
14       presented before the Board under the Environmental  
15       Assessment Act as is the present case.

16               And, you know, we are reacting to a  
17       situation which I would suggest to you has arisen in  
18       the past few months or a couple of years and we are  
19       trying to respond to them effectively.

20               So there is now doubt in my mind or  
21       anybody else's mind that some of the suggestions that  
22       we are making and you are responding to are new, they  
23       are different, they have not been put into place and  
24       there is not a track record to fall back on in terms of  
25       how effective they are.

1                   But we are, as a Board, and as a panel,  
2 determined that we are going to take whatever  
3 initiatives we feel we can within the limits of our  
4 jurisdiction and within the appropriate bounds of  
5 fairness in order to assist the process generally and  
6 in this case specifically.

7                   MR. WILLIAMS: I appreciate it, Mr.  
8 Chairman. I just -- as an observation of course, I  
9 think it is a whole process that quasi-judicial bodies  
10 involve themselves in. It seems to be a topic of  
11 concern and particularly in the environmental area,  
12 given that the Ministry under which -- the legislation  
13 under which you operate is of course all of these  
14 issues as to how to expedite the process, are being  
15 developed through a two-year study or undertaking, as I  
16 understand it.

17                  THE CHAIRMAN: Frankly, there is not a  
18 lot of guidance provided by the judicial--

19                  MR. WILLIAMS: By the Ministry.

20                  THE CHAIRMAN: --system to date. There  
21 is not a lot of judicial precedence in terms of this  
22 type of proceeding.

23                  I am not, by saying that, that courts  
24 have not before decided questions on the powers of  
25 administrative tribunals and hearing procedures in

1 connection therewith, but I would suggest that the  
2 courts have not confronted particular processes under  
3 legislation, such as the Environmental Assessment Act,  
4 which in turn envisage hearings lasting in years as  
5 opposed to months or days.

6 And I would suggest to you that the  
7 bounds of what the Boards or administrative tribunals  
8 can and cannot do, at least as far as the judiciary is  
9 concerned, have not been fully delineated.

10 MR. WILLIAMS: I guess the question that  
11 comes to my mind, thinking out loud, is whether the  
12 Board should let the initiatives that have been  
13 undertaken by Ministry of Environment to review the  
14 whole process through --

15 THE CHAIRMAN: It does not help this  
16 hearing, Mr. William.

17 MR. WILLIAMS: I agree--

18 THE CHAIRMAN. It does not help the few  
19 more that are pending.

20 MR. WILLIAMS: --whether we can wait that  
21 out or whether you have to....

22 THE CHAIRMAN: I mean, that is one way to  
23 handle it, but I can assure you that with the  
24 Ministry's commitment to have a full review of the  
25 whole process and then review of the legislation and

1       then perhaps--

2                    MR. WILLIAMS: It may be some time  
3 coming, I appreciate that.

4                    THE CHAIRMAN: --legislation we are  
5 looking maybe three years down the road and it will not  
6 do this hearing one bit of good nor four or five others  
7 that I can think of about to start.

8                    We are the only ones, meaning the Board,  
9 or tribunals of our nature that can effectively step  
10 into the breach in lieu of legislative amendment to try  
11 and do something. Whether we will be successful,  
12 whether the judiciary will concur with our views is,  
13 you know, a matter of conjecture, but we are committed  
14 I think to some extent to try.

15                  MR. WILLIAMS: Just one last observation  
16 or comment, if I might, Mr. Chairman.

17                  With regard to Point 7, if counsel can  
18 somehow help Board better focus in is to our advantage.  
19 I don't know whether it is the Board's intention to try  
20 to resolve this matter before we adjourn for our site  
21 visit or not, but if it was felt that upon reflection  
22 of all of the concerns and views expressed by  
23 individual counsel here today the Board felt that  
24 considerable progress might have been made towards  
25 solving your dilemma and our dilemma, that you would

1 like still further input from counsel who still might  
2 be able to better crystallize over and above what has  
3 been developed here, I think there was some discussion  
4 last evening about the possibility of counsel  
5 reconvening in an informal fashion one day during the  
6 week following the site visit to give further thought  
7 to the process, if it was going to help the Board in  
8 any way, to meet with the Board in Toronto to have  
9 further input into the process, but I just mention that  
10 to you as a back-up, if you feel it is necessary.

11 I think generally that was thought could  
12 be done if it was deemed to be beneficial to the cause  
13 in what was trying be accomplished. I don't think  
14 there was objection expressed by counsel that -- in  
15 fact I think Ms. Swenarchuk brought that up and it  
16 seemed eminently sound.

17 THE CHAIRMAN: Sorry.

18 MR. WILLIAMS: I am just saying that it  
19 had been raised last evening and I just leave that with  
20 you so it sort of gives you a clear understanding of  
21 what Point 7 was all about.

22 THE CHAIRMAN: Thank you, Mr. Williams.

23 MR. WILLIAMS: Thank you, Mr. Chairman.

24 Ms. Murphy?

25 MS. MURPHY: Mr. Chairman, one

1       observation. You mentioned a few minutes ago that  
2       courts in your view have not yet had the opportunity or  
3       requirement to look at procedural fairness in  
4       administrative tribunals that deal with a lot of  
5       people, a lot of issues over a long period of time.

6                     THE CHAIRMAN: Well, no, I wasn't putting  
7       it in quite those terms, and I am aware of some cases  
8       in that area, but what I am saying is that there has  
9       been a decided lack of judicial pronouncement on the  
10      process specifically involved with the Environmental  
11      Assessment Act.

12                  As you know, there has only really been  
13      the Hydro cases and a couple of other isolated motions  
14      on anything to do with that particular legislation and  
15      that legislation involves a process which, to some  
16      extent, is somewhat different than many other  
17      processes.

18                  It is very broad, it is very all  
19      encompassing, and I am not convinced in my own mind  
20      that the courts, in settling some of these previous or  
21      procedural questions that they have dealt with in other  
22      cases, have had an opportunity to look at some of the,  
23      if I might put it this way, problems that arise in this  
24      particular process.

25                  Whether their conclusions will be exactly

1       the same as in other cases remains to be seen, but I  
2       would suggest to you that it might very well differ to  
3       a certain extent their conclusions based on this  
4       specific type of process.

5                   MS. MURPHY: Fair enough. The only  
6       observation I was thinking to make, Mr. Chairman, is  
7       the following: That attempts to deal with complicated  
8       issues, large numbers of people and over a long period  
9       of time are things that courts do all the time. This  
10      is something that the court system has dealt with over  
11      long periods of time.

12                  THE CHAIRMAN: Very few courts have any  
13      kind of proceedings that last in excess of two years.

14                  MS. MURPHY: Well, I respectfully suggest  
15      that we can find you large lists of cases that do in  
16      fact.

17                  My only point was -- the only point I  
18      wanted to make on that was this: To the extent that  
19      those kinds of things are commonly dealt with in the  
20      courts, I mean the idea that different people have  
21      different points of view and we would all like to  
22      resolve them, what has developed in the court process  
23      is that this attempt to narrow issues, define them and  
24      figure out what you are talking about before you start  
25      happens before the trial starts, and it is very

1 important to all of us that that does happen and we go  
2 through a long series of steps to identify issues, to  
3 have the other side identify issues, to go to pretrial,  
4 so on and forth, and what makes it valuable is that  
5 those things happen before the process starts.

6 . And my comment is just this: That in  
7 thinking about streamlining, I am sure that is one of  
8 the things that the Board will be thinking about very  
9 closely, that that is the time when it is most  
10 valuable.

11 With respect to the things that are --

12 THE CHAIRMAN: I agree with you to a  
13 certain extent and certainly what the Board does in  
14 this instance will probably provide valuable guidance  
15 for future Boards in hearings in connection with other  
16 applications.

17 It is difficult to do it in this case  
18 because the Board did not really address problems  
19 concerning streamlining the process prior to this case  
20 in a really meaningful way because we were not faced  
21 with the problems to the extent that we were and, of  
22 course, the Board has no jurisdiction other than its  
23 recently formulated Rules of Practice and there is no  
24 guidance whatsoever in the legislation before the  
25 matters referred to it.

1                   In other words, we could not have dealt  
2 with this hearing and really could not have dealt with  
3 identifying issues in terms of your particular  
4 application before the application was formally  
5 referred to the Board. We are very much in the middle  
6 of the case.

7                   MS. MURPHY: Certainly. Mr. Campbell put  
8 together his list of comments from last night's  
9 meeting. As you have been told, it is a very fair and  
10 complete account of what happened. Items 1, 2, 3, 4,  
11 5, and 6 not only, in my view, are a fair account of  
12 what happened, but they also set out our position, our  
13 client's position, we are fully in accord with every  
14 one of those points and I have no intention of saying  
15 anything further about that.

16                  No 7, which wasn't really spoken to until  
17 just a few minutes ago by Mr. Williams, I would like to  
18 say one word about. If the Board is disposed to accept  
19 the proposal that is really being made by counsel  
20 today, we would much prefer that you do that sooner  
21 rather than later.

22                  I am very concerned that at this point in  
23 time I have a number of witness statements to complete  
24 and to provide to people and they want to receive them  
25 and they want to put in their interrogatories and so

1 forth and, frankly, I am getting very nervous the way  
2 things stand right now about the time to do that and I  
3 am afraid that stretching out the time now isn't going  
4 to help us in the future. I am very concerned about  
5 completing and serving that material.

6 I have no other submissions to make  
7 unless you have any questions. I did want to ask you  
8 if you had a chance to look at that other  
9 documentation?

10 THE CHAIRMAN: Some of us have looked at  
11 it but we have not yet discussed it, so what I would  
12 like to suggest to all counsel, if this is possible,  
13 and will not inconvenience anyone, I would like to  
14 suggest that we adjourn for 15 minutes so that we can  
15 discuss very briefly, not so much the substantive  
16 matters raised by counsel today, but we would like to  
17 be able to come back and indicate to you very clearly  
18 what we intend to do, not necessarily issue a ruling in  
19 connection with this, but indicate how we are going to  
20 deal with this whole matter.

21 And it may well be that one of the ways -  
22 and we will talk about this during our brief  
23 adjournment - to indicate to you that we will come back  
24 with a firm ruling which might then be delivered  
25 perhaps in Toronto on a day after -- in the week after

1       the site visit, so that it would allow counsel  
2       opportunities for any clarification of the rulings  
3       itself, rather than just issuing the ruling in writing,  
4       and then the parties have to act upon that ruling but  
5       may have some concerns about what it all means. And we  
6       will discuss that in a moment as well.

7                 But I think if we could adjourn for 15  
8       minutes we will come back and will not keep you more  
9       than five or ten minutes after that and then we can  
10      adjourn for the day.

11                 Thank you.

12                 ---Recess at 12:55 p.m.

13                 ---Upon resuming at 1:20 p.m.

14                 THE CHAIRMAN: Thank you, be seated.

15                 Well, counsel, we have had a brief  
16       opportunity to discuss the events of this morning and  
17       we arrived at the following:

18                 Firstly, Ms. Murphy, we have looked at  
19       your executive summaries with respect to Panel 10 and  
20       the other panel and we are in agreement that that is  
21       the form in which we would be satisfied with. It sets  
22       out the issues, in effect, within the statement and it  
23       certainly references supporting documentation giving  
24       page numbers, et cetera. So that, we would suggest,  
25       should be the form to be followed not only by the

1       Ministry of Natural Resources but the parties when it  
2       comes time to preparing their own statements.

3                   So good job and continue on with that  
4       format.

5                   MS. MURPHY: Thank you.

6                   THE CHAIRMAN: Now, with respect to the  
7       procedural matters. The Board has decided that it is  
8       going to proceed in this manner:

9                   We are going to definitely issue further  
10      procedural rulings or directions in connection with the  
11      matters we discussed today. Exactly what those will be  
12      are going to have await until after next week.

13                  What we are going to do is that during  
14      the course of the site visits next week, in the  
15      evenings, the Board will formulate its rulings  
16      precisely in writing and will issue them to the parties  
17      in writing. We are then going to set a morning or  
18      perhaps afternoon, depending on scheduling, at the  
19      Board offices in Toronto either the following week,  
20      that is the week after the site visit, or the week  
21      after and, again, we have some scheduling problems with  
22      the members of the panel themselves to get the precise  
23      day.

24                  We will have Mr. Mander notify the  
25      parties by telephone as to which day and, at that

1 session - which we do not expect to last more than an  
2 hour or two at the outside - it will be solely for the  
3 purpose of counsel clarifying the Board's ruling, so  
4 that everyone walks away at least knowing precisely  
5 what the Board had in mind, if it is not clear from  
6 what we have stated in writing, because it is on that  
7 basis that the parties will be acting in terms of what  
8 may or may not be required.

9                   And since we will be adjourned until  
10 February, we think it important that everybody is ad-  
11 item on what the Board has in mind for those rulings.

12                   I hope from the Ministry's perspective  
13 that will give you appropriate direction soon enough in  
14 order to do what you may have to do prior to returning  
15 for Panel 8 in February.

16                   The Board has taken into account what you  
17 have submitted this morning. The Board wishes to thank  
18 all counsel for getting together and addressing their  
19 mind to these matters which the Board, as you know,  
20 considers to be of some considerable importance and we  
21 will be considering your comments carefully before we  
22 arrive at what we consider to be the appropriate  
23 rulings.

24                   I would say this because we have decided  
25 this at this point, that we are not content to wait

1       until after Panel 8 or the recommencement of the  
2       proceedings in February before we take further  
3       initiatives. We will be doing something, it may not  
4       bear complete resemblance to what we suggested in the  
5       first place because we will be taking into account your  
6       comments, but we are not content to lose, in our  
7       opinion, an opportune time, particularly in view of the  
8       lengthy adjournment coming up, to initiate some  
9       procedures that will be effective with Panel 8.

10                   So in that regard, we certainly  
11          appreciate your concerns to have an opportunity to see  
12          how the previous directives are working, but we also  
13          feel an obligation that more can be done in this regard  
14          and we intend to take some initiatives as I have  
15          stated.

16                   So apart from that, we will have Mr.  
17          Mander contact all of you as to which day in Toronto  
18          you might be present. In the event that counsel for  
19          any of the parties cannot be present, you might, if you  
20          so wish, consider sending another person from your  
21          offices or somebody if in fact you have some problems  
22          with the ruling itself.

23                   If it is impossible for the parties to  
24          attend for one reason or another and you do have some  
25          considerable problems, you might consider submitting

1       something in writing to the panel and we would then at  
2       least take those concerns into account and on the  
3       record would indicate in terms of clarifying the ruling  
4       how we would address those concerns.

5                   So that ultimately all the parties, ,  
6       including those parties who are not present at the  
7       proceedings on a daily basis, would have an indication  
8       of (a) both the ruling and any clarification of the  
9       ruling at the session in Toronto, it will be in the  
10      transcript. I think that is all we have to say in this  
11      regard.

12                  Are there any questions concerning this  
13      specifically?

14                  MR. WILLIAMS: Just two points of  
15      clarification, Mr. Chairman. Did you say that you will  
16      be issuing the order for us to look at this coming  
17      week?

18                  THE CHAIRMAN: Yes, we are hoping to  
19      formulate the actual order this coming week and arrange  
20      through our office in Toronto to have it issued in  
21      written form so that you will have an opportunity to  
22      see the actual ruling prior to the session that we will  
23      be scheduling in Toronto.

24                  MR. WILLIAMS: By what means is it going  
25      to be conveyed to us?

1                   THE CHAIRMAN: Probably by courier or fax  
2 machine for those of you who have it, or I guess you .  
3 could pick it up at the Board offices if necessary.

4                   Anyways, discuss your problems of how it  
5 gets to you with Mr. Mander and he will, I am sure, try  
6 and arrange a most expeditious way of getting it to  
7 you.

8                   MR. COSMAN: Mr. Chairman, in the event  
9 that there is some difficulty in attending the meeting  
10 in that particular week, I presume there will be a  
11 transcript in any event available to the parties?

12                  THE CHAIRMAN: Yes. I am just saying that  
13 if any particular party wants their comments to be  
14 taken into account by the Board and they cannot be  
15 there, you might consider submitting it in writing and  
16 we will try and address both the oral comments as well  
17 as ones we have received from the parties in writing.

18                  Again, all of this is going on the  
19 transcript and this invitation is open to any other  
20 party that is not at the hearing itself that wishes to  
21 comment on the ruling. It will be sent to all parties  
22 on the parties list, both full-time  
23 correspondence parties and others.

24                  Anything further?

25                  (No response)

1                   Well, thank you, ladies and gentlemen.  
2                   We will adjourn now until, I guess it is January the  
3                   30th. Some of you will be accompanying us on the site  
4                   visit.

5                   We certainly wish you well over the next  
6                   couple of months and when we come back we will probably  
7                   all be rejuvenated no a certain extent and be able to  
8                   go at it with much more vigor and hopefully we will get  
9                   somewhere.

10                  Thank you.

11                  ---Whereupon the hearing adjourned at 1:30 p.m., to be  
12                  reconvened on Monday, January 30th, 1989, commencing  
at 9:00 a.m.

13                  (Copyright, 1985)

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